

United States
Circuit Court of Appeals

For the Ninth Circuit.

MARY KALEIALII, REBECCA LEHIA MILES and ANNIE K.
BOYD, and ROBERT N. BOYD, and VICTOR K. BOYD, by
Their Guardian ad Litem, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY and HENRY
HOLMES, Trustees Under the Will of JOHN J. SULLIVAN,
HENRIETTA SULLIVAN, JOHN BUCKLEY, PRISCILLA
ALBERTA SULLIVAN CLARKE and ROBERT KIRK-
WOOD CLARKE, a Minor, JUANITA ELLEN CLARKE, a
Minor, and THOMAS WALTERS CLARKE, a Minor,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

Filed

JUL 20 1915

F. D. Macdonald,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, A. D. 1914, Term.

MARY KALEIALII, REBECCA LEHIA MILES,
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *Ad Litem*, JOSEPHINE BOYD,
Plaintiffs,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE, and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,
Defendants.

Amended Complaint.

ACTION TO QUIET TITLE.

Now come Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, plaintiffs herein, and complaining of Henrietta Sullivan, John Buckley and Henry Holmes, Trustees under the will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke, and Robert Kirkwood Clarke, a minor, Juanita Ellen Clarke, a minor, and Thomas Walters Clarke, a minor, defendants, all of Honolulu, City

and County of Honolulu, Territory of Hawaii, for cause of action allege:

That plaintiffs above named are entitled in fee simple absolute to a one-half undivided interest in all those certain lands and premises situated in the City and County of Honolulu, Territory of Hawaii, being a portion of L. C. A. 801 to Alexander Adams, and being a portion of the same premises conveyed by Alexander [1*] Adams, Sr., to Alexander Adams, Jr., by deed dated June 22d, 1850, and recorded in the office of the registry of conveyances in Liber 4, page 214, and bounded and described as follows:

Beginning at a point on the northeast side of Hotel Street $304^{\circ} 56'$ 137.6 feet from the east corner of Hotel and Union Streets, and running by true azimuths:

1. $224^{\circ} 10'$ 43.0 feet along remaining portion of
L. C. A. 801 to A. Adams,
2. $138^{\circ} 10'$ 45.9 feet do do do
3. $44^{\circ} 30'$ 53.7 feet to the new line of Hotel
Street.
4. $304^{\circ} 56'$ 46.7 feet along the northeast line of
Hotel Street to the point of
beginning.
Area 2220 square feet.

That said plaintiffs are entitled to the immediate use and possession of said undivided interest in and to the above-described land and premises from the death of Peke Stone, the mother of Mary Kaleialii,

*Page-number appearing at foot of page of original certified Record.

and the grandmother of the remaining plaintiffs, the said Peke Stone having died on the 5th day of July, 1914, she, the said Peke Stone, being one of the grantees named in a certain deed executed by Alexander Adams, Jr., to his daughters Peke and Maria, dated the 15th day of September, 1858, wherein and whereby the said Alexander Adams, Jr., conveyed to his said daughters Peke and Maria the lands and premises herein before described for the period of their lives with the remainder over in fee simple absolute to the children of the said Peke and Maria in the event that they, the said Peke and Maria have children who might survive them or either of them; that the person herein above named as Peke or Peke Stone is the mother of Mary Kaleialii, and the grandmother of the remaining plaintiffs herein, and is the same person named in the said deed of Alexander Adams, Jr., as Peke, said deed is recorded in the registry of conveyances in Liber 11, page 75, which said deed is in the Hawaiian language and is annexed hereto and [2] marked exhibit "A," a translation thereof in the English language is also annexed hereto and marked exhibit "B."

That the said defendants claim an estate or interest in said premises adversely to the said plaintiffs, and plaintiffs allege that said claim is without right, and that said defendants have no estate, title, right, interest, claim or demand whatsoever, in and to said property so claimed by plaintiffs.

That the said claim of the defendants has been and is, greatly vexatious, damaging and prejudicial to the plaintiffs in their enjoyment of the said prem-

ises and that defendants have taken possession of said premises, and are now in the possession thereof, and by reason thereof plaintiffs are prevented from and unable to have their share of said premises adjudicated by partition and are unable to lease or dispose of the same to advantage.

WHEREFORE, plaintiffs pray that the defendants may be cited to appear and answer this suit in the manner and as provided and required by law, and that they may be required to set forth the nature and extent of their claims, and that the same may be determined by this Court, and that said claims may be adjudged to be wholly without right, and that said defendants, their servants, agents and employees, may be forever barred from asserting any right or claim whatsoever, in or to the said premises, or any part thereof, or any interest therein adversely to the plaintiffs; that said plaintiffs may have judgment quieting their title to said property and declaring that they have fee simple title in and to the said property as claimed by them; that they may be awarded possession thereof and that they may have all necessary writs and orders for the complete execution of such judgment as the Court may render herein; and that plaintiffs may have their costs herein and such [3] other and further relief as may be proper in the premises.

Dated, Honolulu, T. H., December 16th, 1914.

(S) MARY KALEIALII.

(S) REBECCA LEHIA MILES.

(S) ANNIE K. BOYD.

(S) ROBERT N. BOYD.

(S) VICTOR K. BOYD.

By (S) JOSEPHINE BOYD,

Their Guardian Ad Litem.

(S) LORRIN ANDREWS,

Attorney for Plaintiffs.

Territory of Hawaii,

City and County of Honolulu,—ss.

Mary Kaleialii, being first duly sworn, upon her oath deposes and says:

That she is one of the plaintiffs named in the foregoing amended complaint; that she has read the said amended complaint and knows the contents thereof, and that all the matters and things therein stated are true to her knowledge.

(S) MARY KALEIALII.

Subscribed and sworn to before me the 16th day of December, 1914.

[Notarial Seal] (S) JAS. K. JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [4]

Exhibit "A" to Amended Complaint.**ALEXANDER ADAMS, JR., DEED TO PEKE
AND MARIA.**

Sept. 15, 1858.

L. C. A. 5049, B, R. P. 1918-
2349-2530.

Book II, pp. 75.

Olomana, Kona, Oahu.

He palapala hoolilo loa i ka aina keia hanaia i keia la unikumamalima o September, M. H. o ka Haku hookahi tausani ewalu haneri a me kanalima kumamawalu, o Alexander Adams, Jr., no Honolulu ma ka mokupuni o Oahu, Ka mea nona ka aoao mua a me Peke a me Maria kana mau katikamahine no ia wahi pu no ma ka aoao elua.

Ke hoike nei o Alexander Adams, Jr., i oleloia maluna, a no Kona makemake iho e hoomakaukau i mea e pono ai no kana mau kaikamahine no Peke a me Maria, i mea e pale aku ai ina poino hiki wale mai, ano ka malama ana i ko laua mau kino ma na mea e pono ai, me ka hanai ana ia laua. A no ka mea o Alexander Adams, Jr., a mamuli o kona makemake iho i kana mau kaikamahine i oleloia maluna e pomaikai ana auanei laua i ka hua e loa^amai ana, a i na hoolimalima, a i na keiki, a me na hope ame na ukuia mai no na waiwai paa i kakau ia a i hooakaakaia malalo iho nei o keia palapala a hiki aku i ka pau ana o ko laua ola a mau loa aku i ko laua mau hooilina me ka kuokoa i na kaohi ana me ke komo ole mai hoi o ka laua mau kane iloko o ia mau wahi oia hoi o ka laua mau kane i keia manawa, a e loa^a hou aku ana paha ma keia hope aku, ke ole

e hanaia kekahi palapala hoolilo i na kane a laua, Nolaila ano ke hoike aku nei keia palapala o Alexander Adams, Jr., i oleloia maluna, ano ka pono ona mea i oleloia maloko nei, ano na dala elua hoi i haawi ia mai iloko o kona lima e na mea nona ka aoao elua i oleloia maluna, a ua loaa io mai no ia mea hoike aku i ka hana ana, ka ai ana, haawi ana, hoolilo ana, hookuu ana, hooki ana a hoopau ana hoi, nolaila ma keia palapala ke hana nei, kuai lilo, haawi ana, hoolilo aku, hookuu ana, hookuuaku, a hoolilo loa ana aku i na mea nona ka aoao elua i oleloia maluna o kela mau apana aina a pau loa e waiho ana [5] ma Olomana iloko o Honolulu aina, a me ka pahale e waiho ana iloko o ke kulana kauhale o Honolulu e pili ana i ke alanui Hotele (Kuleana Helu 5049 B) o kekahi no Malule i kuai ia mai ma ka la ekolu o Augate, 1854, palapala sila nui helu 1918 i kakau inoa ia ma ka la 11 o Aperila, 1855, a me ka palapala sila nui helu 2349 ame 2530 i kakau inoa ia ma ka la 8 o Aperila, 1857, a me ka la 14 o September, 1858, a me ka pahale i haawiiia mai ma ke ano Alodio o Alexander Adams i kakau ia ma ka la 22 o June, 1850, a i hooiaioia e A. Bates ma ka la 22 o Augate, 1850, a penei na palena oia mau Apana aina.

4 loi ma Olomana (Kuleana Helu 5049 B a Sila Nui Helu 1918, e hoomaka ana ma ke kihi Akau o keia aina ae ana aku Hema 33° Hik 206 pauk me kaholo a Hema 49° Kom 195 pauk me aupuni Akau 29° Kom 277 pauk me aupuni no ke kula.

Akau 35½ hik 31 pauk me kaholo akau 61° hik 66
pauk me ka-
holo.

Hema 59° hik 45 pauk me kaholo.

Akau 61° “ 66 “ “ “

Hema 59° “ 45 “ “ “

Akau 70° “ 64 “ “ “ a hiki i ka hoomaka ana eia
ka Ili 47/100
o ka eka.

2 loi (Sila nui helu 2349) E hoomaka keana ma ke
kihi hema o keia a e holo Akau 54° Hik 189 pauk aoao
ma kahawai alaila Akau 37° kom 125 pauk ma ke ka
aupuni alaila Hema 49° kom 50 pauk a me ka.

Akau 29° kom 283 pauk pili me Keoki, alaila.

Hema 60° 50' kom 44 pauku a me.

Hema 55° 0' kom 133 “ me kahole aleila.

Hema 32° 0' Hik 342 “ a me.

Hema 47° 0' Hik 73 “ ma ka aina o Paia
a i ka hoomaka
ana he 46/100 o
ka eka.

4 loi ma ka kula (sila nui helu 2530) e hoomaka
ana i ka ana ma ke kihi komohana makai o keia ma
ka aoao komohana Akau o ke kahawai e pili ana i ko
Hapunako a me ko Paia a holo.

Hema 46° Hik 765 pauk ma ko Paia a

Akau 39° 30' Hik 285 pauk ma ko Auwaiolimu

Akau 23° 30' Kom 670 pauk ma kalokohonu a ma
kela aoao o ke kahawai

Hema 68° 30' kom 62 pauk ma ke Papamakua

Akau 34° 0' “ 87 “ “ “ “

Hema 54° 30' “ 140 “ “ “ “ [6]

Hema 30° 30' hik 75 pauk ma ko Kaholo

Hema 60° 30' kom 46 “ “ “ “

Akau	36° 30	“	141	“	“	“	“
Hema	47° 30'	“	140	“	“	“	Napunako
Hema	36° 0'	hik	124	“	“	“	“
Hema	55° 30'	kom	191	“	“	“	“

a hiki i kahi i hoomaka
ai he 3-18/100 eka.

Pahale e pili ana i ke alanui Hotele iloko o ke kulana-kauhale o kuleanaia ma ka inoa o Alexander Adams i hoolilo loa ia mai ka la 22 o June, 1850, a i kopeia ma ka Buke Aupuni ma ke keena kakau kope i kopeia ma ka Buke 4 a me ka aoao 214 o ka la 22 o Augate, 1850.

Commencing at John Duke's house along the street southeast by E. $\frac{1}{2}$ E. 46 feet 6 inches, thence NE. $\frac{1}{2}$ N. 62 feet thence NW. by W. 44 feet thence SW. $\frac{1}{2}$ W. 72 feet to the place of commencement. E lilo pu nohoi na mea maluna iho na hale a me na mea e pili mai ana o na pono a me na pomaikai a me na loa a pau loa mai ana ma ke Kanawai a me ke Kaulike ma ua mau aina la ma na aoao a pau, a oia mau mea a pau a me na waiwai a me na pono e pili ana i ka aoao mua, e lilo ia no Peke a me Maria a me ko laua mau pani hakahaka a me na hooilina a ina hope no ka manawa pau ole.

A o Alexander Adams, Jr., i oleloia maluna a hiki i ka make ana o kana mau kaikamahine alaila e waiho aku laua i keia aina a me na pono e pili ana i ka laua mau mea e kauoha aku ai, ke hanaia me ka oiaio a me ka pololei, aka, ina e hana ole ia elike me ka olelo maluna, ka hoolilo ana a me ka hooiaio ana, alaila, e hoihoi ia no keia mau aina a me na mea a pau e pili ana ia Alexander Adams, Jr., ka aoao

inua a i kona mau hooilina a no lakou wale no na pomaikai ke ole he mau keiki a ka aoao elua, aka, ina he mau keiki ka na mea nona ka aoao elua e ili aku no no pono a pau e like me ka pili ana i na makua.

Eia kekahi ina e make kekahi o na mea ma ka aoao elua aole ana keiki e ola ana ia wa, e ili aku kona pono a pau i oleloia maluna o ka mea o laua e ola ana. [7]

A ma keia palapala o na mea nona ka aoao elua i oleloia maluna ke hoike aku nei me ka hooihiki ana a me ke apono ana aku i na mea a pau iloko o keia palapala a ke hoopaa nei a ke ae pu nei me ka mea nona ka aoao mua i oleloia maluna a manaoio ae hooi-aio aku, ae hoopaa a hooko i ka oiaio o keia palapala a ine na ano a pau i oleloia maloko nei; I hoike no keia ke kakau nei wau me kuu lima a me ka sila i keia la a me ka makahiki i oleloia maluna.

(Sgd.) ALEXANDER ADAMS, Jr.

Hania a kakau inoa ia a Silaia a haawiia ma ka ike maka o.

(Sgd.) J. L. NAILIILII.

“ KAAIAHUA.

Register Office, Oahu, Sept. 15th, A. D. 1858, personally appeared before me Alexander Adams, Jr., and acknowledged that he had executed the foregoing instrument for the uses and purposes therein set forth.

(Sgd.) THOMAS BROWN,

Deputy Registrar of Conveyances.

Received and compiled the 15th day of September, A. D. 1858, at $\frac{3}{4}$ past 2 o'clock P. M.

(Sgd.) THOMAS BROWN,

Deputy Registrar of Conveyances. [8]

**Exhibit "B" to Amended Complaint—Translation
of Exhibit "A," Deed, September 15, 1858,
Alexander Adams, Jr., to Peke and Maria.**

This deed is an absolute conveyance of land made this 15th day of September in the year of our Lord One Thousand Eight Hundred and Fifty-eight between Alexander Adams, Jr., of Honolulu, Island of Oahu, the party of the first part, and Peke and Maria, his daughters of the same place of the second part.

WITNESSETH: That the above-named Alexander Adams, Jr., of his own volition, in order to provide for his daughters, Peke and Maria, so as to prevent unavoidable inconvenience and for the care of their person with things necessary as well as their maintenance. And whereas, the said Alexander Adams, Jr., because of his own desire for the afore-said daughters that they may be benefited with the proceeds arising therefrom together with the rents to their children and assigns as well as the payments to be made for the real estate hereunder conveyed and described premises to the end of their lives and forever to their heirs, independent of all restraint and interference of their husbands or those they may have hereafter, providing no conveyance is made to their husbands.

Now, therefore, this deed sheweth that the above-mentioned Alexander Adams, Jr., in consideration of the statements herein made and of two dollars paid into his hands by the parties of the above-mentioned second part which has been received in wit-

ness of the making, sale, giving, conveying, releasing, effectuating and confirming, therefore, by this deed, do make, sell, give, convey, release, effectuate and forever quitclaim to the parties of the second part hereinabove mentioned all those certain pieces of land situated at Olomana Honolulu, and the house lot situated in the town of Honolulu, along Hotel street (L. C. A. 5049B) to Keoki no Malule; deeded to me on the 3d day of August, 1854, Royal Patent 1918, acknowledged on the 11th day of April, 1855, and also Grant 2349 and 2530 signed on the 8th of April, 1857, and the 14th day of September, 1858, and the house lot sold to me by deed from [9] Alexander Adams, signed on the 22d day of June, 1850, and acknowledged by A. Bates on the 22d day of August, 1850, the descriptions of which are as follows:

4 Taro patches in Olomana (L. C. A. 5049B R. P. 1918) Commencing at the north corner of this land and surveyed as follows:

South 33° E 206 Links along Kaholo

South 49° W 198 Links along Government

North 29° W 277 Links along Government dry land

North 35½° E 31 Links along Kaholo

North 61° E 66 Links along Kaholo

South 59° E 45 Links along Kaholo

North 61° E 66 Links along Kaholo

South 59° E 45 Links along Kaholo

North 70° E 64 Links along Kaholo to the place
of commencement. The area
is 47/100 acres.

2 Taro patches (Grant 2349). Commencing at the

south corner of this and running north 53° E along the stream 189 links thence

North 37° W 125 Links along Government, thence

South 49° W 50 Links thence

North 29° W 283 Links along Keoki, thence

South $60^{\circ} 50'$ W 44 Links, thence

South $55^{\circ} 0'$ W 113 Links along Kaholo, thence

South $32^{\circ} 0'$ W 342 Links thence

South $47^{\circ} 0'$ E 73 Links along land of Paia to the point of beginning containing 46/100 acres.

4 Taro patches and dry land (Grant 2530). Commencing at the west corner makai of this land at the northwest corner of stream along the land of Napunako and Paia and running:

South 46° E 765 Links along Paia, thence

North $39^{\circ} 30'$ E 285 Links along Auwaiolimu,

North $23^{\circ} 30'$ W 670 Links along Kalokohonu to the opposite side of stream.

South $68^{\circ} 30'$ W 62 Links along Papamakua

North $34^{\circ} 0'$ W 87 Links along Papamakua

South $54^{\circ} 30'$ W 140 Links along Papamakua

South $30^{\circ} 30'$ E 75 Links along Kaholo

South $30^{\circ} 30'$ W 46 Links along Kaholo

North $36^{\circ} 30'$ W 141 Links along Kaholo

South $47^{\circ} 30'$ W 140 Links along Napunako

South $36^{\circ} 0'$ E 124 Links along Napunako

South $55^{\circ} 30'$ E 191 Links along Napunako to the place of commencement containing 3-18/100 acres.

House lot along Hotel Street in the City of Honolulu, the land commission of which is issued to Alex-

ander Adams, which was sold to me on the 22d day of June, 1850, copied in Government Registry of Conveyances, Buke 4, page 214, on the 22d day of [10] August, 1850.

Commencing at John Dukes house along the street southeast by east $\frac{1}{2}$ E. 46.6 feet, thence NE. $\frac{1}{2}$ N. 62 feet, thence NW. by W. 44 feet, thence SW. $\frac{1}{2}$, W. 72 feet to the place of commencement.

To have together with the things thereupon the houses and appurtenances, rights, and privileges as well as the proceeds thereof, either in law or equity, to receive from said lands and from all sources and all things together with the interests and rights appertaining to the party of the first part (shall belong to Peke and Maria and to their representatives and heirs and assigns forever.

And the above-mentioned Alexander Adams, Jr., and until the decease of his daughters they shall leave these lands and rights appertaining to whomsoever they may demise, providing it be done in truth and honesty, but should it not be made in accordance with the above such as the conveyance and the acknowledgment thereof, then in such case these lands should revert together with all appurtenances to Alexander Adams, Jr. of the first part and to his heirs and the benefits shall only be theirs, providing the second party have no children, but in the event that the parties of the second part having children all the rights shall descend to them in the manner as enjoyed by their parents.

Provided that if one of the parties of the second part should die without any issue living at the time,

all the rights above-mentioned shall descend to the survivor of them.

The parties of the second part hereinabove set forth do hereby witness under oath and by affirmation as well as to all the contents of this deed and do hereby bind and both consent to and with the party of the first part hereinabove mentioned to ratify and certify and to bond and execute to the truth of this deed as well as to all the conditions herein mentioned.

In witness whereof I hereby sign with my hand and seal [11] this day and the year first above written.

(Sgd.) ALEXANDER ADAMS, Jr.

Made, signed and sealed in the presence of

(Sgd.) J. L. MAILILII,

(Sgd.) KAAIAHUA.

Register Office, Oahu, September 15th, 1858, personally appeared before me Alexander Adams, Jr., and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

(Sgd.) THOMAS BROWN,

Deputy Registrar of Conveyances.

Received and compiled the 15th day of September, A. D. 1858, at $\frac{3}{4}$ past two o'clock, P. M.

(Sgd.) THOMAS BROWN,

Deputy Registrar of Conveyances.

[Endorsed]: L. No. 8032. Reg. 4, pg. 498. Circuit Court First Circuit, Territory of Hawaii. Mary Kaleialii et al., Plaintiffs, vs. Henrietta Sullivan et

al., Defendants. Amended Complaint. Filed December 17, 1914, at 05 minutes past 9 o'clock, A. M. (Sgd.) J. A. Dominis, Clerk. Lorrin Andrews, Honolulu, T. H., Attorney for Plaintiffs.

Due service of the within Amended Complaint by receipt of a copy thereof is hereby admitted this 17th day of December, 1914.

FREAR, PROSSER, ANDERSON & MARX,

Per A. M. C.,

Attorneys for Certain Defendants.

Due service of the within Amended Complaint by receipt of a copy thereof is hereby admitted this 17th day of December, 1914.

HOLMES, STANLEY & OLSON,

Attorneys for Certain Defendants. [12]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, 1914, Term.

LAW No. 8032.

MARY KALEIALII, REBECCA LEHIA MILES,
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by their
Guardian *Ad Litem*, JOSEPHINE BOYD,
Plaintiffs,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY and
HENRY HOLMES, Trustees under the Will
of JOHN J. SULLIVAN, HENRIETTA
SULLIVAN, JOHN BUCKLEY, PRIS-

CILLA ALBERTA SULLIVAN CLARKE,
and ROBERT KIRKWOOD CLARKE, a
Minor, JUANITA ELLEN CLARKE, a
Minor and THOMAS WALTERS CLARKE,
a Minor,

Defendants.

Defendants' Answer and Plea.

ACTION TO QUIET TITLE.

Come now the above-named defendants, and answering unto the complaint of the above-named plaintiffs in the above-entitled cause, deny each and every allegation in said complaint set forth and contained.

The said defendants further given notice hereby that they intended to rely upon the statute of limitations as a defense in said cause, and say that they and their predecessors in title have been in open, notorious, exclusive, continuous and hostile possession of the premises described in the said complaint adversely to the said plaintiffs, and under a claim of right for a period of more than ten years preceding the date of the filing of the said complaint, and that thereby the plaintiffs' cause of action, if any, has been barred by the statute of limitations.

Dated, Honolulu, T. H.

HENRIETTA SULLIVAN,
JOHN BUCKLEY and
HENRY HOLMES,

Trustees under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke, and Robert Kirkwood Clarke, a Minor, Juanita Ellen Clarke, a Minor, and Thomas Walters Clarke, a Minor, and Priscilla Alberta Sullivan Clarke, Guardian *Ad Litem* of said Minors.

By FREAR, PROSSER, ANDERSON &
MARX,

M. F. P.,
HOLMES, STANLEY & OLSON,
Their Attorneys.

Service of the foregoing answer and plea this 29th day of December, 1914, is hereby admitted.

LORRIN ANDREWS,
Attorney for the Plaintiff.

[Endorsed]: L. No. 8032. Reg. 4, pg. 498. In the Circuit Court of the First Judicial Circuit, Territory of Hawaii, January, 1914, Term. Mary Kaleialii et al., Plaintiffs, vs. Henrietta Sullivan, et al., Defendants. Answer and Plea. Frear, Prosser, Anderson & Marx, Stangenwald Bldg., Honolulu, and Holmes, Stanley & Olson, 863 Kaahumanu St., Honolulu, Attorneys for Defendants. Filed at 1:15 o'clock, A. M., December 29, 1914. J. A. Dominis, Clerk. [14]

Minutes of Court—November 14, 1914.

Saturday, November 14, A. D. 1914.

L. 8032.

ROBERT N. BOYD and MARY KALEIALII,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees under the
Will of JOHN J. SULLIVAN, HENRIETTA
SULLIVAN, JOHN BUCKLEY, PRIS-
CILLA ALBERTA CLARKE, and ROBERT
KIRKLAND CLARKE, a Minor, JUANITA
ELLEN CLARKE, a Minor, and THOMAS
WALTERS CLARKE, a Minor.

ACTION TO QUIET TITLE.

Came on to be heard this day, plaintiff's motion to amend complaint by striking from said complaint as a party plaintiff the name of Robert N. Boyd and inserting in his place and stead his heirs at law, to wit: Rebecca Lehia Miles, and Annie K. Boyd, in their proper person, and Robert K. Boyd and Victor K. Boyd, by a guardian *ad litem* to be appointed by the Court, and that an amended complaint alleging the death of Robert N. Boyd and the claims of heirs at law be filed within ten days after the granting of this motion; Lorrin Andrews, Esq., appears as attorney for plaintiff, and Claerence H. Olson, Esq., of the firm of Holmes, Stanley & Olson, appears as attorney for defendant.

By consent of counsel and order of the Court, hearing of the motion is set for Saturday, November 28,

A. D. 1914, at the hour of 9:00 o'clock in the forenoon of said day. [15]

Minutes of Court—November 28, 1914.

Saturday, November 28, A. D. 1914.

L. 8032.

ROBERT N. BOYD, et al.

vs.

HENRIETTA SULLIVAN et al.

ACTION TO QUIET TITLE.

Upon motion of Lorrin Andrews, Esq., attorney for plaintiffs, hearing of plaintiffs' motion to amend the complaint in the above-entitled cause, set for 9:00 o'clock A. M. this day, is continued until and set for Saturday, December 5, A. D. 1914, at the hour of 9:00 o'clock in the forenoon of said day.

Minutes of Court—December 15, 1914.

Tuesday, December 15, A. D. 1914.

L. 8032.

R. N. BOYD et al.,

vs.

HENRIETTA SULLIVAN, et al.

Order to Amend Complaint.

ACTION TO QUIET TITLE.

A motion having been made in the above-entitled matter suggesting the death of Robert N. Boyd, one of the plaintiffs herein, and it appearing from said motion and suggestion of death that the said Robert N. Boyd had died since the commencement of said action, leaving as his heirs, Rebecca

Lehia Miles, Annie K. Boyd, Robert K. Boyd and Victor K. Boyd, all of whom are of age except Robert K. Boyd and Victor K. Boyd, respectively eighteen and sixteen years of age; and it further appearing that said Robert N. Boyd died intestate and that it is necessary that a guardian *ad litem* be appointed to represent the minor children of said Robert N. Boyd.

Now, this matter coming on to be heard before me on the 15th day of December, 1914, and Lorrin Andrews appearing in behalf [16] of the motion and Holmes, Stanley & Olson, representing the defendants herein and consenting thereto, it is ORDERED that the said complaint in the above-entitled action be amended by striking from the said complaint as a party plaintiff the name of Robert N. Boyd and inserting in his place his heirs at law, to wit, Rebecca Leah Miles and Annie K. Boyd, in their proper persons, and Robert K. Boyd and Victor K. Boyd by their guardian *ad litem*, and that an amended complaint alleging the death of Robert N. Boyd and the claims of his heirs at law to the property in dispute be filed within ten days after the granting of said motion.

And it is further ordered that Josephine Boyd be appointed guardian *ad litem* for Robert K. Boyd and Victor K. Boyd, minors, herein.

And it is further ordered that the defendants have, and each of them has, fifteen days within which to answer, demur or otherwise plead to the amended complaint herein.

Dated, Honolulu, T. H., December 15, 1914.

(S) T. B. STUART,

Judge Circuit Court, First Judicial Circuit, Territory of Hawaii.

Minutes of Court—January 29, 1915.

Friday, January 29, A. D. 1915.

L. 8032.

R. N. BOYD et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants.

ACTION TO QUIET TITLE.

Came on to be heard this day the above-entitled cause, Lorrin Andrews, Esq., appearing as attorney for the plaintiff, and C. H. Olson, Esq., for the defendants.

By agreement of attorneys and order of the Court, this cause is continued and set for trial, jury waived, for Saturday, [17] February 6, 1915, at the hour of 10 o'clock in the forenoon of said day.

Minutes of Court—February 6, 1915.

Saturday, February 6, A. D. 1915.

L. 8032.

R. N. BOYD et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants.

ACTION TO QUIET TITLE.

Owing to the illness of two attorneys representing for or on behalf of the defendants in the above-entitled cause, upon motion of R. B. Anderson, Esq., of the firm of Frear, Prosser, Anderson & Marx, with the consent of Lorrin Andrews, Esq., appearing as attorney for the plaintiffs, is further continued and set down for trial, jury waived, for Saturday, February 13, 1915, at the hour of 10 o'clock in the forenoon of said day.

Upon motion of Lorrin Andrews, Esq., Frank Andrade, Esq., and attorney, was duly entered as attorney of record in the above cause.

Minutes of Court—February 13, 1915.

Saturday, February 13, A. D. 1915.

L. 8032.

R. N. BOYD et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants.

ACTION TO QUIET TITLE.

The above-entitled cause having been continued and set for trial for 10 o'clock A. M. this day, Lorrin Andrews, Esq., appearing as attorney for the plaintiff; and W. L. Stanley, Esq., and C. H. Olson, Esq., of the firm of Holmes, Stanley & Olson, and M. F. Prosser, Esq., of the firm of Frear, Prosser, Anderson & Marx, appeared as attorneys for the defendants.

By agreement of attorneys the above cause is con-

tinued and reset for trial for Wednesday, February 24, 1915, at the hour [18] 10 o'clock in the forenoon of said day.

Minutes of Court—February 24, 1915.

Wednesday, February 24, A. D. 1915.

L. 8032.

R. N. BOYD et al.,

Plaintiffs,

vs.

H. SULLIVAN et als.,

Defendants.

ACTION TO QUIET TITLE.

The above cause, jury waived, having been set for trial at 10 o'clock A. M. this day, W. L. Stanley, Esq., of the firm of Holmes, Stanley & Olson, appearing as attorney for the defendants, moved that this cause be continued and set down for trial for Thursday, March 25, 1915, at 10 o'clock in the forenoon of said day. It is so ordered by the Court.

Minutes of Court—March 31, 1915.

Wednesday, March 31, A. D. 1915.

L. 8032.

R. N. BOYD et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants.

ACTION TO QUIET TITLE.

The above-entitled cause came on for trial at 10 o'clock A. M., this day sitting without a jury,

Messrs. Lorrin Andrews and Frank Andrade appearing as attorneys for the plaintiffs, and Messrs. Frear and Prosser, of the firm of Frear, Prosser, Anderson & Marx, and Messrs. W. L. Stanley, and C. H. Olson, of the firm of Holmes, Stanley & Olson, appearing as attorneys for the defendants.

Mr. Andrews reads the plaintiffs' amended complaint and makes opening statement on behalf of the plaintiffs.

Mr. Olson reads the defendants' answer, relying upon the statute of limitations as their ground of defense.

Henry Peters, Clerk of the Land Office, is called, sworn [19] and examined as a witness on behalf of the plaintiffs, and had with him Royal Patent No. 27 to Alexander Adams, dated May 21, 1849 showing land at Honolulu, in Vol. 1 of Patents.

Mr. Andrews states that he will file a certified copy of this patent and offer it in evidence.

Mr. Prosser objects.

The Court overruled the objection.

Certified copy of Royal Patent No. 27, received in evidence and marked Plaintiffs' Exhibit "A."

Land Commission Award No. 801 to Alexander Adams dated January 29, 1849, showing land at Honolulu, was also read, and Mr. Andrews offers a certified copy of this award in evidence.

Mr. Prosser objects.

The Court overruled the objection.

Certified copy of Land Commission Award received in evidence and marked as Plaintiffs' Exhibit "B."

No cross-examination.

Geo. C. Kopa, Deputy Registrar of Conveyances, is called, sworn and examined as a witness on behalf of the plaintiffs, and had with him Vol. 4. On page 214 of said volume, he reads a deed executed by Alexander Adams to Alexander Adams, Jr., under date of June 22, 1850, conveying land in Honolulu.

Mr. Andrews states that he will introduce a certified copy of the deed in evidence later on.

Mr. Prosser objects.

The Court overruled the objection.

Certified copy of the deed received in evidence and marked Plaintiffs' Exhibit "C."

Witness reads from Volume 11 at page 75 a deed executed by Alexander Adams, Jr., to Peke and Maria under date of September 15, 1858. [20]

Mr. Andrews states that he will introduce later on a certified copy of this deed in evidence.

Mr. Prosser objects.

The Court overruled the objection.

Certified copy of the deed received in evidence and marked as Plaintiffs' Exhibit "D."

No cross-examination.

Mrs. Mary Kaleialii, one of the plaintiffs, is called, sworn and examined. Mr. Charles L. Hopkins, Official Hawaiian Interpreter, interpreting.

Mr. Prosser cross-examines.

Redirect examination by Mr. Andrews.

Mrs. R. N. Boyd is called, sworn and examined as a witness on behalf of the plaintiffs.

No cross-examination.

At 11:25 A. M. Court takes a recess for a space of five minutes and reconvened at 11:30 A. M.

Mr. Andrews moves to amend the plaintiffs' amended complaint by striking out the figures 63.7 feet and inserting in lieu thereof the figures 53.7 feet.

The Court allows the amendment.

Robert D. King, surveyor from the Territorial Survey Department, is called, sworn and examined as a witness on behalf of the plaintiffs. He had with him Territorial Registered Map No. 1387. Mr. Andrews offers in evidence tracing of this map.

Mr. Olson objects.

The Court overruled the objection.

Received in evidence and marked as Plaintiffs' Exhibit "E."

At 12 o'clock M. Court adjourned to 2 o'clock P. M. [21]

AFTERNOON SESSION.

Mr. King resumed the witness-stand.

Mr. Prosser cross-examines.

Redirect examination by Mr. Andrews.

Court at 2:35 P. M. takes a recess for five minutes and reconvened at 2:40 P. M.

Mrs. Mary Kaleialii is recalled by the defendant.

Mr. Prosser offers in evidence Records of Birth taken from original copy of the records in the Territorial Board of Health in Volume 4A on page 80, showing the date of birth of Napunako, by Edwin Boyd, father, and Peke, mother, on September 2, 1863, at the Pauoa School, in Honolulu.

Received in evidence and marked Defendants' Exhibit "1."

Geo. C. Kopa, Deputy Registrar of Conveyances, is called as a witness on behalf of the defendants, and had with him Government Record No. 26, and at page 434 of said record appears a deed. Mr. Prosser moves to offer a certified copy of the document in evidence.

Mr. Andrews objects.

The Court overruled the objection.

Received in evidence and marked Defendants' Exhibit "2."

The witness is thereupon instructed to read a document in Liber 96 at page 354, showing a deed dated October 21, 1855.

Mr. Prosser moves to offer a certified copy of the document in evidence.

Mr. Andrews objects.

The Court overruled the objection.

Received in evidence and marked Defendants' Exhibit "3."

The witness is also instructed to turn on page 277 in Liber 97, wherein appears a Trust Deed.

Mr. Prosser moves to offer the Trust Deed in evidence and will file a certified copy of the document later on. [22]

Mr. Andrews objects.

The Court overruled the objection.

Received in evidence and marked Defendants' Exhibit "4."

Mr. Prosser offers in evidence a Trust Deed made and executed by C. Bolte and G. H. Robertson to

J. J. Sullivan and J. Buckley, dated December 8th, 1885, and of record in Liber 99 at page 97 et seq.

Mr. Andrews objects.

The Court overruled the objection.

Trust Deed received in evidence and marked Defendants' Exhibit "5."

Geo. H. Robertson is called, sworn and examined as a witness on behalf of the defendants.

Mr. Andrews cross-examines.

Mr. C. L. Hopkins is called, and sworn and examined as a witness on behalf of the defendants.

No cross-examination.

C. Bolte is called, sworn and examined as a witness on behalf of the defendants.

No cross-examination.

John Buckley is called, sworn and examined as a witness on behalf of the defendants.

Mr. Andrews cross-examines.

At 3:50 P. M. defendants rest.

Thereupon the Court requested both parties to furnish the Court with an abstract of title of their claim within 5 days and case was then submitted.
[23]

Minutes of Court—August 28, 1915.

Saturday, August 28, A. D. 1915.

L. 8032.

R. N. BOYD and MARY KALEIALII,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants.

ACTION TO QUIET TITLE.

The above-entitled cause came on this day upon the settlement of the questions of law to be reserved to the Supreme Court, Lorrin Andrews, Esq., appearing as attorney for the plaintiffs, and W. F. Frear, Esq., of the firm of Frear, Prosser, Anderson & Marx, and C. H. Olson, Esq., of the firm of Holmes & Olson, appearing as attorneys for the defendants.

After argument by counsel, it was decided that but one question of law be reserved, viz: the construction of the deed from Alexander Adams, Jr., to Peke and Maria; the Court instructing the attorneys on either side to submit forms of reserved question on Monday morning.

At 10:25 A. M. Court takes recess subject to call.

At 12:00 M. Court adjourns to Monday, August 30, A. D. 1915, at 10 o'clock A. M.

Minutes of Court—August 30, 1915.

Monday, August 30, A. D. 1915.

L. 8032.

R. N. BOYD, et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants,

ACTION TO QUIET TITLE.

On account of the departure of C. H. Olson, Esq., for the mainland of the United States of America on this day the Court orders all cases in which he appears as attorney of record, either for plaintiff or defendant, are hereby continued. [24]

Minutes of Court—September 1, 1915.

Wednesday, September 1, A. D. 1915.

L. 8032.

MARY KALEIALII et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants,

ACTION TO QUIET TITLE.

This cause on this day certified to the Supreme Court on reserved question of law for consideration of the Supreme Court of the Territory of Hawaii.

Minutes of Court—January 12, 1916.

Wednesday, January 12, A. D. 1916.

L. 8032.

R. N. BOYD. et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et als.,

Defendants,

ACTION TO QUIET TITLE.

The Court on this day renders its decision as follows:

Decision.

This cause coming on for trial on this day, the Court finds from the *remittitur* in the Supreme Court that the questions heretofore submitted to that Court have been decided in favor of the defendant.

The Court holds that such question is decisive of this case. Therefore the judgment is in favor of the defendants.

Dated Honolulu, Hawaii, January 12, 1916.

[Seal] (S) T. B. STUART,

Third Judge, First Circuit Court.

Mr. Andrews excepts to the decision as contrary to the law, the evidence and the weight of evidence and gives notice of appeal to the *Ninth Circuit of Appeals*. [25]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January, A. D. 1915, Term.

MARY KALEIALII, REBECCA LEHIA
MILES, and ANNIE K. BOYD, and ROBERT
N. BOYD, and VICTOR K. BOYD,
by their Guardian *ad litem*, JOSEPHINE
BOYD,

Plaintiffs,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE, and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants,

Reservation of Questions of Law for Consideration of the Supreme Court.

ACTION TO QUIET TITLE.

This action to quiet title to an undivided half interest in certain land hereinafter referred to, having been tried and submitted to the Court, sitting without a jury, upon the plaintiff's amended complaint, the defendants' answer and the evidence and briefs presented by the respective parties, the Court now reserves for the consideration of the Supreme Court of the Territory the questions of law hereinafter set forth and for that purpose hereby reports to said Supreme Court so much of the cause as may be necessary to a full understanding of said question.

[26]

THE FACTS.

1. Alexander Adams, Jr., being then the owner of said land in fee simple, conveyed the same (with other lands) to his daughters Peke (known also as Peke Stone) and Maria (known also as Maria A. Boyd) by a deed dated September 15, 1858, a copy of which deed marked Exhibit "A," and a translation of the same, marked Exhibit "B," agreed by the parties to be a correct translation, are hereto attached and made a part hereof. The land in question is that part of the land which is referred to in said deed as a house lot on Hotel Street.

2. Said Peke thereafter executed and delivered to said Maria two deeds dated December 1, 1868, and October 21, 1885, respectively, in terms conveying her interest in said land to said Maria and her heirs

forever, copies of which deeds and translations thereof are hereto attached, marked Exhibit "C" and Exhibit "D," respectively. Said Maria thereafter executed and delivered to G. H. Robertson and C. Bolte a deed dated October 26, 1885, in terms conveying to them and the survivor of them and their successors in trust all of said land, and said G. H. Robertson and C. Bolte thereafter executed and delivered a deed dated December 8, 1885, in terms conveying all of said land to John J. Sullivan and John Buckley and their heirs and assigns forever, who, and whose assigns, have ever since been and now are in possession of said land and have from time to time made valuable improvements thereon. Said John Buckley is one of the defendants herein and the other defendants are the successors in interest of said John J. Sullivan. Said Maria died in 1894, leaving children who still survive.

3. Said Peke died on July 5, 1914, leaving surviving her only two children, namely, Mary Kaleialii, born on October 20, 1859, one of the plaintiffs herein, and Robert N. Boyd, born on September 2, 1863, who died on September 9, 1914, leaving surviving him four children, namely, Rebecca Lehia Miles, Annie K. [27] Boyd, Robert N. Boyd and Victor K. Boyd, the other plaintiffs herein. Evidence was presented at the trial to show that said children of Peke were illegitimate but no finding of fact has yet been made on that point and no question of law is now reserved in respect thereto.

THE QUESTIONS RESERVED.

- (1) What interest or estate in said land did said

deed from Alexander Adams, Jr., convey to said Peke.

(2) What interest or estate, if any, in said land did said deed from Alexander Adams, Jr., convey to such children, if any, of Peke as are referred to in said deed.

Dated, Honolulu, T. H., August 31st, 1915.

[Seal]

(S) T. B. STUART,

Third Judge, Circuit Court, First Judicial Circuit.

[28]

Exhibit "A,"—Deed, September 15, 1858, Alexander Adams Jr., to Peke and Maria.

ALEXANDER ADAMS, Jr., DEED TO PEKE
AND MARIA.

Sept. 15, 1858.

L. C. A. 5048, B. R. P. 1918—2349—2530.

Book II, pp. 75.

Olomana, Kona, Oahu.

He palapala hoolilo loa i ka aina keia hanaia i keia la umikumamalima o September, M. H. o ka Haku hookahi tausani ewalu haneri a me kanalima kumamawalu, o Alexander Adams, Jr., no Honolulu ma ka mokupuni o Oahu. Ka mea nona ka aoao mua a me Peke a me Maria kana mau Kaikamahine no ia wahi pu no ma ka aoao elua.

Ke hoiike nei o Alexander Adams, Jr., i oleloia maluna, a no kona makemake iho e hoomakaukau i mea e pono ai no kana mau kaikamahine, no Peke a me Maria, i mea e pale aku ai i na poino hiki wale mai, a no ka malama ana i ko laua mau kino ma na mea e pono ai, a me ka hanai ana ia laua. A no ka mea o Alexander Adams, Jr., a mamuli o kona make-make iho i kana mau kaikamahine i oleloia maluna

e pomaikai ana hoi laua i ka hua e loa mai ana a i na hoolimalima, a i na keiki, a me no hope a me na ukuia mai no na waiwai paa i kakauia a i hoakaa-kaia malalo iho nei o keia palapala a hiki aku i ka pau ana o ko laua ola a mau loa aku i ko, laua hoolilina me ke kuokoa i na kaohi ana me ke komo ole mai hoi o ka laua mau kane iloko o ia mau wahi oia hoi o ka laua mau kane i keia manawa, a e loa hou aku ana paha ma keia hope aku, ke ole e hanaia kekahi palapala hoolilo i na kane a laua. Nolaila ano ke hoike aku nei keia palapala o Alexander Adams, Jr., i oleloia maluna, a no ka pono o na mea i oleloia maloko nei, a no na dala elua hoi i haawii mai iloko o kona lima e na mea nona ka aoao elua i oleloia maluna, a ua loa io mai no ia mea hoike aku i ka hana ana, kuai ana, haawi ana, hoolilo ana, hookuu ana, hooki ana a hoopau ana hoi, nolaila ma keia palapala ke hana nei, kuai lilo, haawi ana, hoolilo aku, hookuu ana, hookuu aku, a hoolili loa ana aku i na mea nona ka aoao elua i oleloia maluna o kela mau apana aina a pau loa e waiho ana ma Olomana iloko o Honolulu aina, a me ka pahale e waiho ana iloko o ke kulanakauhale o Honolulu e pili ana i ke alanui Hotele (Kuleana Helu 5049 B) o kekahi no Malule i kuai ia mai ma ka la [29] ekolu o Augate 1854, palapala sila nui helu 1918 i kakau inoa ia ma ka la 11 o Aperila, 1858, a me ka Palapala Sila Nui Helu 2349 a me 2530 i kakau inoa ia ma ka la 8 o Aperila, 1857, a ma ka la 14 o September, 1858, a me ka pahale i haawii mai ma ke ano Alodio o Alexander Adams i kakauia ma ka la 22 o June, 1850, a i hooiaio ia e A. Bates ma ka la 22 o Augate, 1850,

a penei na palena o ia mau apana aina :

4 loi ma Olomana (Kuleana Helu 5049 B a Sila Nui Helu 1918, e hoomaka ana ma ke kihi Akau o keia aina a e ana aku Hema 33° Hik 206 pauk me Kaholo a Hema 49° Kom 198 pauk, me Aupuni Akau 29° Kom 277 Pauk me Aupuni no ke kula.

Akau 35½° hik 31 pauk me Kaholo akau 61° hik 66 pauk me Kaholo.

Hema 59° hik 45 pauk me Kaholo akau 61° hik 66 pauk me Kaholo.

Akau 61° hik 66 pauk me Kaholo akau 61° hik 66 pauk me Kaholo.

Hema 59° hik 45 pauk me Kaholo akau 61° hik 66 pauk me Kaholo.

Akau 70° hik 64 pauk me Kaholo a hiki i ka hoomaka ana ia. Ka Ili 47/100 o ka eka.

2 loi (Sila Nui Helu 2349) E hoomaka ke ana ma ke kihi Hema o keia a holo Akau 53° Hik 189 pauk aoao ma kahawai alaila Akau 37° kom 125 pauk ma ke aupuni alaila Hema 49° kom 50 pauk a ma ka.

Akau 29° kom 283 pauk pili me Keoki, alaila, Hema 60° 50' kom 44 pauk a me.

Hema 55° 0' kom 133 pauk me Kaholo, alaila.

Hema 32° 0' hik 342 pauk a me.

Hema 47° 0' hik 73 pauk ma ka aina o Paia a i ka hoomaka ana, he 46/100 o ka eka.

4 loi ma ke kula (Sila Nui Helu 2530) e hoomaka ana i ke ana ma ke kihi Komohana makai o keia ma ka aoao Komohana Akau o ke kahawai e pili ana i ko Napunako a me ko Paia a holo.

Hema 46° Hik 765 pauk ma ko Paia a.

Akau 39° 30' Hik 285 pauk ma ko Auwaiolimu.

Akau 23° 30' Kom 670 pauk ma Kalokohonu a ma kela aoao o ke kahawai.

Hema 68° 30' Kom 62 pauk ma ko Papamakua.

Akau 34° 0' Kom 87 pauk ma ko Papamakua.

Hema 54° 30' Kom 140 pauk ma ko Papamakua.

Hema 30° 30' Hik 75 pauk ma ko Kaholo.

Hema 60° 30' Kom 46 pauk ma ko Kaholo.

Akau 36° 30' Kom 141 pauk ma ko Kaholo.

Hema 47° 30' Kom 140 pauk ma ko Napunako

Hema 36° 0' Hik 124 pauk ma ko Napunako.

Hema 55° 30' Kom 191 pauk ma ko Napunako.

a hiki i kahi i hoomaka ai, he 3-18/100 eka.

Pahale e pili ana i ke alanui Hotele iloko o ke kulanakauhale i kuleanaia ma ka inoa o Alexander Adams a hoolilo loa ia mai ka la 22 o June, 1850, a i kopeia ma ka Buke Aupuni ma ke keena kakau [30] kope i kopeia ma ka Buke 4 a me ka aoao 214 o ka la 22 o Augate, 1850.

Commencing at John Duke's house along the street south east by E $1\frac{1}{2}$ E 46 feet 6 inches then NE; N 62 feet then NW by W 44 feet thence SW $1\frac{1}{2}$ W 72 feet to the place of commencement. E lilo pu no hoi na mea maluna iho na hale a me na mea e pili mai ana o na pono a me na pomaikai a me na loa a pau loa mai ana ma ke Kanawai a me ke Kaulike ma ua mau aina la ma na aoao a pau, a oia mau mea a pau a me na waiwai a me na pono e pili ana i ka aoao mua, e lilo ia no Peke a me Maria a me ko laua mau pani hakahaka a me na hooilina a i na hope no ka manawa pau ole.

A o Alexander Adams, Jr., i oleloia maluna a hiki i ka make ana o kana mau kaikamahine alaila

e waiho aku laua i keia aina a me na pono e pili ana i ka laua mau mea e kauoha aku ai, ke hanaia me ka oiaio a me ka pololei, aka ina e hana ole ia elike me ka olelo maluna, ka hoolilo ana, a me ka hooiaio ana. Alaila e hoihoi ia no keia mai aina a me na mea a pau e pili ana ia Alexander Adams Jr., ka aoao mua, a i kona mau hooilina, a no lakou wale no na pomaikai ke ole he mau keiki a ka aoao elua, aka, ina he mau keiki ka na mea nona ka aoao elua e ili aku no na pono a pau elike me ka pili ana i na makua.

Eia keia ina e make kekahi o na mea ma ka aoao elua aole ana keiki e ola ana ia wa, e ili aku kona pono a pau i oleloia ke hoike aku nei me ka hoohiki ana a me ka apono ana aku i na mea a pau iloko o keia palapala a ke hoopaa nei a ke ae pu nei me ka mea nona ka aoao mua i oleloia maluna a manaoio a e hooiaio aku, a e hoopaa a hooko i ka oiaio o keia palapala a me na ano a pau i oleloia maloko nei; I hoike no keia ke kakau nei wau me kuu lima a me ka sila i keia la a me ka makahiki i oleloia maluna.

(Sgd.) ALEXANDER ADAMS, Jr.

Hanaia a kakau inoa ia a Silaia a haawiia ma ka ike maka ana o.

(Sgd.) J. L. MAILIILII,

(Sgd.) KAAIAHUA. [31]

Register Office, Oahu, Sept. 15th, A. D. 1858, personally appeared before me Alexander Adams, Jr., and acknowledged that he had executed the foregoing instrument for the uses and purposes therein set forth.

.. (Sgd.) THOMAS BROWN,
Deputy Registrar of Conveyances.

Received and compiled the 15th day of September,
A. D. 1858, 3/4 past two o'clock P. M.

(Sgd.) THOMAS BROWN,
Deputy Registrar of Conveyances. [32]

**Exhibit "B"—Translation of Exhibit "A" Deed,
September 15, 1858, Alexander Adams Jr., to
Peke and Maria.**

This deed is an absolute conveyance of land made this 15th day of September in the year of our Lord One Thousand Eight Hundred and Fifty-*either* between Alexander Adams, Jr., of Honolulu, Island of Oahu, the party of the first part and Peke and Maria, his daughters of the same place of the second part.

WITNESSETH: That the above-named Alexander Adams, Jr., of his own volition, in order to provide for his daughters Peke and Maria so as to prevent unavoidable inconvenience and for the care of their person with things necessary as well as their maintenance. And whereas, the said Alexander Adams, Jr., because of his own desire for the afore-said daughter that they may be benefited with the proceeds arising therefrom together with the rents to their children and assigns as well as the payments to be made for the real estate hereunder conveyed and described premises to the end of their lives and forever to their heirs, independent of all restraint and interference of their husbands or those they may have hereafter providing no conveyance is made to their husbands.

Now therefore this deed sheweth that the above-mentioned Alexander Adams, Jr., in consideration of

the statements herein made and of two dollars paid into his hands by the parties of the above-mentioned second part which has been received in witness of the making, sale, giving, conveying, releasing, effectuating and confirming, therefore, by this deed, do make, sell, give, convey, release, effectuate and forever *wuit* claim to the parties of the second part hereinabove mentioned all those certain pieces of land situated at Olomana, Honolulu, and the house lot situated in the town of Honolulu, along Hotel Street (L. C. A. 5049 B) to Keoki no Malule; deeded to me on the 3d day of August, 1854, Royal Patent 1918, acknowledged on the 11th day of April, 1855, and also grant 2349 and 2530 signed on the 8th day of April, 1857, and the 14th day of September, 1858, and the house lot sold to me by deed from [33] Alexander Adams, signed on the 22d day of June, 1850, and acknowledged by A. Bates on the 22d day of August, 1850, the descriptions of which are as follows:

4 Taro patches in Olomana (L. C. A. 5049 B. R. P. 1918) Commencing at the north corner of this land and surveyed as follows:

South 23° E. 206 links along Kaholo

South 49° W. 198 links along Government

North 29° W. 277 links along Government dry
land

North 35½° E. 31 links along Kaholo

North 61° E. 66 links along Kaholo

South 59° E. 45 links along Kaholo

North 61° E. 66 links along Kaholo

South 59° E. 45 links along Kaholo

North 70° E. 64 links along Kaholo to the place of commencement. The area is 47/100 acres.

2 Taro patches (Grant 2349). Commencing at the south corner of this and running north 53° E. along the stream 189 links thence

North 37° W 125 links along Government, thence

South 49° W 50 links thence

North 29° W 283 links along Keoki, thence

South 60° 50' W 44 links thence

South 55° 0' W 113 links along Kaholo, thence

South 32° 0' W 342 links thence

South 47° 0' E 73 links along land of Paia to the point of beginning containing 46/100 acres.

4 Taro patches and dry land (Grant 2530). Commencing at the west corner makai of this land at the northwest corner of stream along the land of Napunako and Paia and running:

South 46° E 765 links along Paia, thence

North 39° 30' E 285 links along Auwaiolimu,

North 23° 30' W 670 links along Kalokohonu to the opposite side of stream

South 68° 30' W 62 links along Papamakua

North 34° 0' W 87 links along Papamakua

South 54° 30' W 140 links along Papamakua

South 30° 30' E 75 links along Kaholo

South 60° 30' W 46 links along Kaholo

North 36° 30' W 141 links along Kaholo

South 47° 30' W 140 links along Napunako

South 36° 0' E 124 links along Napunako

South 55° 30' E 191 links along Napunako to the place of commencement, containing 3-18/100 acres.

House lot along Hotel Street in the City of Honolulu, the land commission of which is issued to Alexander Adams, which was sold to me on the 22d day of June, 1850, copied in the Government Registry [34] of Conveyances, Buke 4, page 214, on the 22d day of August, 1850.

Commencing at John Duke's house along the street southeast by east $\frac{1}{2}$ E. 46.6 feet, thence NE. $\frac{1}{2}$ N. 62 feet, thence NW. by W. 44 feet thence SW. $\frac{1}{2}$ W. 72 feet to the place of commencement.

To have together with the things thereupon the houses and appurtenances, rights and privileges as well as the proceeds thereof, either in law or equity, to receive from said lands and from all sources and all things together with the interest and rights appertaining to the party of the first part (shall belong to Peke and Maria and to their representatives and heirs and assigns forever.

And the above-mentioned Alexander Adams, Jr., and until the decease of his daughters they shall leave these lands and rights appertaining to whomsoever they may devise, providing it be done in truth and honesty, but should it not be made in accordance with the above such as the conveyance and the acknowledgment thereof, then in such case these lands should revert together with all appurtenances to Alexander Adams, Jr., of the first part and to his heirs and the benefits shall only be theirs providing the second party have no children, but in the event that the parties of the second part having children all the rights shall descend to them in the manner enjoyed by their parents.

Provided that if one of the parties of the second part should die without any issue living at the time, all the rights above mentioned shall descend to the survivor of them.

The parties of the second part hereinabove set forth do hereby witness under oath and by affirmation as well to all the contents of this deed and do hereby bind and both consent to and with the party of the first part hereinabove mentioned to ratify and certify and to bond and execute to the truth of this deed as well as to all the conditions herein contained.
[35]

In witness whereof I hereby sign with my hand and seal this day and year first above written.

(Sgd.) ALEXANDER ADAMS, Jr.

Made, signed and sealed in the presence of

(Sgd.) J. L. MAILILII.

(Sgd.) KAAIAHUA.

Register Office, Oahu, September 15th, 1858, personally appeared before me Alexander Adams, Jr., and acknowledged that he executed the foregoing instrument for the uses and purposes therein set forth.

(Sgd.) THOMAS BROWN,

Deputy Registrar of Conveyances.

Received and compiled the 15th day of September, A. D. 1858, at $\frac{3}{4}$ past two o'clock P. M.

(Sgd.) THOMAS BROWN,

Deputy Registrar of Conveyances. [36]

**Exhibit "C"—Deed, December 1, 1868, Peke A.
Stone to Maria A. Boyd.**

BOOK 26, PAGES 434-435.

Stamped.

E ike auanei na kanaka a pau ma keia palapala Owau o PEKE A. STONE no Honolulu, Mokupuni Oahu, Kaikamahine no Alexander Adams, Junior, no ka mea ua haawi mua mai o MARIA A. BOYD, kuu kaikaina, no Honolulu no, i hookahi dala iloko o kuu lima, a ke ae aku nei au ma keia palapala ua loa no ia'u ia dala, a no kuu aloha nui hoi ia MARIA A. BOYD, kuu kaikaina.

Nolaila, ua kuai, ua haawi a ua hoolilo a ma keia palapala ke kuai, ke haawi a ma keia ke hoolilo loa akunei au ia MARIA A. BOYD a i kona mau hooilina a no kona mau hope no ka manawa pau ole i kuu pono, kuu pomaikai, a me kuu kuleana a pau iloko o na apana aina a pau ma ka Mokupuni Oahu i hoolilo ia ia'u a me MARIA i oleloia maluna e Alexander Adams Junior ma kana palapala hoolilo i hanaia ma ka la 15 o Sepatemaba, M. H. 1858, a ua kopeia ma ke Keena o ka Luna Kakau Kope ma Honolulu ma ka Buke 11 ma na aoao 75, 76 a me 77, a ua hoakakaia na palena o ia mau apana aina ma kela palapala hoolilo.

E lilo loa keia mau Apana Aina ia MARIA A. BOYD a i kona mau hooilina a me Kona mau hope, me na mea apau e pili ana i ka Aina, a ke hai aku nei au ma keia palapala, aole o'u kuleana i koe ma kela mau Apana Aina i hoikeia maloko o ka palapala hoolilo a ko maua makuakane.

I hoike no keia ua kakau au i kuu lima a me kuu Sila i keia la mua o Dekemaba, M. H. Hookahi tausani ewalu haneri me kanaono Kumamawalu.

WITNESS:

W. AULD.

[Seal] (Signed) PEKE A. STONE.

REGISTER OFFICE,

OAHU,—ss.

On this 1st day of December, A. D. 1868, [37] personally appeared before me Peke A. Stone, party to the foregoing instrument who acknowledged that she had executed the same for the uses and purposes therein set forth.

(Signed) THOMAS BROWN,

Registrar of Conveyances.

Recorded and compared this 1st day of December, A. D. 1868, at 1 o'clock P. M.

THOMAS BROWN,

Registrar of Conveyances. [38]

**Translation of Exhibit "C," Deed, December 1, 1868,
Peke A. Stone to Maria A. Boyd.**

Book 26, Pages 434-435.

(TRANSLATION OF PRECEDING DEED.)

Stamped.

KNOW ALL MEN BY THESE PRESENTS, that I, PEKE A. STONE, of Honolulu, Island of Oahu, the daughter of Alexander Adams, Junior, whereas my younger sister Maria A. Boyd of Honolulu had already given unto my hand ONE DOLLAR, the receipt whereof by these presents is hereby acknowledged and for the great love I bear unto the

said MARIA A. BOYD, my younger sister.

THEREFORE I have sold, granted and conveyed, and by these presents I do hereby sell, grant and convey unto MARIA A. BOYD and to her heirs and representatives forever all my right, easement and interest in all those pieces of land situate in the Island of Oahu, conveyed to me and Maria aforesaid by Alexander Adams Junior by his deed dated September 15, A. D. 1858, and recorded in the Office of the Registrar of Conveyances at Honolulu, in Book 11, pages 75, 76 and 77, said pieces of land are more fully described in said deed.

TO HAVE AND TO HOLD the said pieces of land unto MARIA A. BOYD and to her heirs and representatives forever, with all of the appurtenances belonging to said lands, and I do hereby declare by these presents that I have no more interest in the aforesaid pieces of land described in the said deed from our father.

IN WITNESS WHEREOF I have hereunto set my hand and seal the first day of December, A. D. One Thousand Eight Hundred and Sixty-eight.

[Seal]

(Signed) PEKE A. STONE.

Acknowledgment and recording same as in Hawaiian deed attached. [39]

Exhibit "D"—Deed, October 21, 1885, Peke A. Stone to Maria A. Boyd.

Book 96, Page 354.

Stamped \$1.00.

E ike auanei na kanaka a pau ma keia palapala owau o PEKE A. STONE, ka wahine mare o J. M. Stone i make ma Kaleponi, ua kuai, haawi a hoolilo,

a ma keia palapala ke kuai, haawi a hoolilo loa aku nei au ia MARIA A. BOYD, no Honolulu, Mokupuni o Oahu, i kuleana a pau loa iloko o na Aina a pau loa, ka palena, ua hoikeia maloko o kekahi palapala kuai i hanaia e Alex. Adams, Jr. ia Peke a me Maria, a ua kopeia ia palapala kuai ma ka Buke o ke Aupuni Heluu 11 aoao 75, 76 a me 77, a ua Alexander Adams, Jr., la, ka makuakane pono i o Maria A. Boyd a me a'u.

Eia ke kumu o kuu hoolilo ana i kuu kuleana iloko o ia mau apana aina, no kuu aloha i kuu kaikaina a no kona haawi ana mai iloko o kuu lima i hookahi dala.

Nolaila ua lilo loa aku kuu kuleano a pau iloko o ua mau apana aina la ia MARIA A. BOYD a me kona mau hooilina a hope paha no ka manawa pau ole, e lilo pu no hoi me na pono, na pomaikai, a me na mea a pau i pili pono i ka aina, a lilo loa ia MARIA A. BOYD a me kona mau hooilina a hope paha no ka manawa pau ole. A no ka oiaio o keia ke kau nei au i kuu inoa a e hoopili pu no hoi i kuu sila ma keia la 21 o Okatoba, 1885.

[Seal]

REBECCA ADAMS STONE.

IMUA O. G. H. ROBERTSON.

O A H U—ss.

On this 22d day of October, 1885, personally appeared before me Rebecca Adams Stone to me known to be the person described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein set forth.

(Signed) CECIL BROWN,

Agent to Take Acknowledgment, Island of Oahu.

Recorded and compared this 23d day of October,
A. D. 1885, at 11 o'clock A. M.

MALCOLM BROWN,
Deputy Registrar of Conveyances. [40]

**Translation of Exhibit "D"—Deed, October 21, 1885,
Peke A. Stone to Maria A. Boyd.**

Book 96, Page 354.

(TRANSLATION OF ATTACHED DEED.)

Stamped \$1.00.

KNOW ALL MEN BY THESE PRESENTS,
that I, PEKE A. STONE, the wife of J. M. Stone,
who died in California, have sold, granted and con-
veyed and by these presents do hereby sell, grant and
forever convey unto MARIA A. BOYD of Honolulu,
Island of Oahu, All my interest in all the lands de-
scribed in that certain deed made by Alex. Adams,
Jr., to Peke and Maria, the said deed is recorded in
the Book of the Government Number 11, Pages 75, 76
and 77, the said Alexander Adams, Jr., is the own
father of Maria A. Boyd and myself.

The reason I have conveyed my interest in the
aforesaid pieces of land is on account of the love I
bear unto my younger sister, and also she has given
into my hand the sum of One Dollar.

Therefore I have conveyed all my interest in the
said pieces of land to Maria A. Boyd and to her heirs
and representatives forever, also all the rights, ease-
ments and appurtenances to the same belonging.

IN WITNESS WHEREOF I have hereunto set

my hand and affixed my seal this 21st day of October, 1885.

[Seal] (Signed) REBECCA ADAMS STONE.

In presence of:

G. H. ROBERTSON.

(Same acknowledgment and recording as preceding deed.)

[Endorsed]: L. 8032. Reg. 4, Pg. 498. Circuit Court First Circuit. Territory of Hawaii, January Term, 1915. Mary Kaleialii, et al, Plaintiffs, vs. Henrietta Sullivan et al, Defendants. Reservations of Questions of Law for Consideration of the Supreme Court. Filed Sept. 1st, 1915, at 10 o'clock A. M. B. N. Kahalepuna, Clerk. [41]

*In the Supreme Court of the Territory of Hawaii,
October Term, 1915.*

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD and VICTOR K. BOYD, by their
guardian *ad Litem*, JOSEPHINE BOYD, v.
HENRIETTA SULLIVAN, JOHN BUCK-
LEY and HENRY HOLMES, Trustee under
the will of JOHN J. SULLIVAN,
HENRIETTA SULLIVAN, JOHN BUCK-
LEY, PRISCILLA ALBERTA SULLIVAN
CLARKE, and ROBERT KIRKWOOD
CLARKE, a minor, JUANITA ELLEN
CLARKE, a minor, and THOMAS WAL-
TERS CLARKE, a minor.

Opinion of Supreme Court, Territory of Hawaii.

Hon. T. B. STUART, Judge.

Argued October 21, 1915.

Decided November 9, 1915.

WATSON and QUARLES, JJ., and Circuit Judge ASHFORD in place of ROBERTSON, C. J., Disqualified.

Deeds—Construction.—A deed to P and M, habendum to P and M and “their representatives, heirs and assigns forever,” conveys to each of said grantees a fee simple in an undivided half of the land.

Same—Same—Clearly expressed intention of parties given effect.—Where the granting clause and habendum in a deed decisively show the intention of the parties ambiguities and inconsistencies in other and subsequent clauses of the deed will not defeat such intention. [42]

OPINION OF THE COURT BY WATSON, J.

This action, to quiet title to a parcel of land situate on Hotel street in Honolulu, was tried by the Court, jury waived, and was submitted below on the pleadings and the evidence and briefs presented by the respective parties. It comes here on reserved questions which require the construction of a certain deed in the Hawaiian language, executed by Alexander Adams, Jr., to his two daughters, Peke and Maria. A translation of the material parts of the deed, as agreed to by the parties, is as follows:

“This deed is an absolute conveyance of land made

this 15th day of September in the year of our Lord One Thousand Eight Hundred and Fifty-eight between Alexander Adams, Jr. of Honolulu, Island of Oahu, the party of the first part, and Peke and Maria, his daughters of the same place of the second part.

“WITNESSETH: That the above-named Alexander Adams, Jr. of his own volition, in order to provide for his daughters Peke and Maria so as to prevent unavoidable inconvenience and for the care of their person with things necessary as well as their maintenance. And whereas, the said Alexander Adams, Jr. because of his own desire for the aforesaid daughters that they may be benefited with the proceeds arising therefrom together with the rents to their children and assigns as well as the payments to be made for the real estate hereunder conveyed and described premises to the end of their lives and forever to their heirs, independent of all restraint and interference of their husbands or those they may have hereafter, providing no conveyance is made to their husbands.

“Now therefore this deed showeth that the above-mentioned Alexander Adams, Jr. in consideration of the statements herein made and of two dollars paid into his hands by the parties of the above-mentioned second part which has been received in witness of the making, sale, giving, conveying, releasing, effectuating and confirming therefore, by this deed do make, sell, give, convey, release effectuate and forever quit claim to the parties of the second part hereinabove mentioned all those certain pieces of land” (here

follows a description of the land conveyed, including the parcel in question).

“To have together with the things thereupon the houses and appurtenances, rights and privileges as well as the proceeds thereof, either in law or equity, to receive from said lands and from all sources and all things together with the interest and rights appertaining to the party of the first part (shall belong to Peke and Maria and to their representatives and heirs and assigns forever.

“And the above-mentioned Alexander Adams, Jr. and until the decease of his daughters they shall leave these lands and rights appertaining to whomsoever they may devise, providing it be done in truth and honesty, but should it not be made in accordance with the above such as the conveyance and the acknowledgment thereof, then in such case these lands should revert together with all appurtenances to Alexander Adams, Jr. of the first part and to his heirs and the benefits shall only be theirs providing the second party have no children, but in the event that the parties of the second part having children all the rights shall descend to them in the manner enjoyed by their parents. [43]

“Provided that if one of the parties of the second part should die without any issue living at the time, all the rights above mentioned shall descend to the survivor of them.

“The parties of the second part hereinabove set forth do hereby witness under oath and by affirmation as well to all the contents of this deed and do hereby bind and both consent to and with the party

of the first part hereinabove mentioned to ratify and certify and to bond and execute to the truth of this deed as well as to all the conditions herein contained.

“In witness whereof I hereby sign with my hand and seal this day and the year first above written.

“ALEXANDER ADAMS, Jr.”

The following facts, *inter alia*, are reported by the presiding judge of the trial court:

“1. Alexander Adams, Jr., being then the owner of said land in fee simple, conveyed the same (with other lands) to his daughters Peke (known also as Peke Stone) and Maria (known also as Maria A. Boyd) by a deed dated September 15, 1858 * * * ” (a translation of the same, agreed to by the parties to be a correct translation, being hereinabove set out).

“2. Said Peke thereafter executed and delivered to said Maria two deeds dated December 1, 1868, and October 21, 1885, respectively, in terms conveying her interest in said land to said Maria and her heirs forever. * * * Said Maria thereafter executed and delivered to G. H. Robertson and C. Bolte a deed dated October 26, 1885, in terms conveying to them and the survivor of them and their successors in trust all of said land, and said G. H. Robertson and C. Bolte thereafter executed and delivered a deed dated December 8, 1885, in terms conveying all of said land to John J. Sullivan and John Buckley and their heirs and assigns forever, who, and whose assigns, have ever since been and now are in possession of said land and have from time to time made valuable improvements thereon. Said John Buck-

ley is one of the defendants herein and the other defendants are the successors in interest of said John J. Sullivan. Said Maria died in 1894, leaving children who still survive.”

“3. Said Peke died on July 5, 1914, leaving surviving her only two children, namely, Mary Kaleialii, born on October 20, 1859, one of the plaintiffs herein, and Robert N. Boyd, born on September 2, 1863, who died on September 9, 1914, leaving surviving him four children, namely, Rebecca Lehia Mlies, Annie K. Boyd, Robert N. Boyd and Victor K. Boyd, the other plaintiffs herein. * * * ”

The plaintiffs claim that the deed from Alexander Adams, Jr., to his daughters Peke and Maria, have only a life interest in one-half of the land to each of the grantees with remainder in fee simple to their respective children, and that on the death of Peke on July 5, 1914, her life estate ended and a remainder in fee simple in her half of the land took effect in possession in her two surviving children, namely, Mary Kaleialii (one of the plaintiffs) and Robert N. Boyd, who was the only other original plaintiff, but upon whose death, September 9, 1914, his children were substituted [44] in his place as co-plaintiffs with Mary Kaleialii. The defendants claim that the deed to Peke and Maria gave them each a fee simple in half of the land and that Peke's interest passed to Maria by her two deeds of 1868 and 1885, and that the fee simple in both halves, or the whole of the land, passed by subsequent deeds from Maria through Robertson and Bolte to the defendants, who have been in undisturbed possession,

claiming under said deeds a fee simple title to the whole of the land, and spent large sums in improvements thereon, for the last thirty years.

Counsel for plaintiffs invoke the rule that deeds should be construed in accordance with the intention of the parties to them and argue that it is apparent from a reading of the entire instrument that the deed from Alexander Adams to his daughters, Peke and Maria, was intended to convey but a life interest to the grantees named therein with remainder over to their children, respectively. In support of this position counsel rely most strongly upon those portions of the deed contained in the premises: "In order to provide for his daughters Peke and Maria so as to prevent unavoidable inconvenience and for the care of their person with things necessary as well as their maintenance"; "that they may be benefited with the proceeds arising therefrom together with the rents to their children and assigns as well as the payments to be made for the real estate hereunder conveyed and described premises to the end of their lives and forever to their heirs"; and the portion of the deed immediately following the *habendum* clause as follows: "And the above-mentioned Alexander Adams, Jr., and until the decease of his daughters they shall leave these lands and rights appertaining to whomsoever they may devise, providing it be done in truth and honesty, but should it not be made in accordance with the above such as the conveyance and the acknowledgment thereof, then in such case these lands should revert together with all appurtenances to Alexander Adams, Jr., of the first part and to his heirs and the

benefits shall only be theirs providing the second [45] party have no children, but in the event that the parties of the second part having children all the rights shall descend to them in the manner enjoyed by their parents. Provided, that if one of the parties of the second part should die without issue living at the time, all the rights above mentioned shall descend to the survivor of them.”

We cannot adopt the position of counsel. According full recognition to the rule that deeds should be construed in accordance with the intention of the parties to them, that must be taken as qualified by the other rule that such intention must be ascertained from the language of the instrument itself. *Mercer v. Kirkpatrick*, 22 Haw. 644; *Green Bay & Miss. Canal Co. v. Hewett*, 42 Am. Rep. 701, 702. In *Ackerman v. Vreeland*, 14 N. J. Eq. 23, 28, the court, in construing a deed, said:

“It is a common law conveyance, and like all similar muniments of title, is to be construed according to its terms, and not according to the real or supposed intention of the parties.”

“The question is not, what was the intention of the parties, but what is the meaning of the words that they used.” Lord Denman in *Rickman v. Carstairs*, 5 B. & Ad. 651, 663.

It will be seen from the deed that the grantor, Alexander Adams, Jr., after first designating the deed “an absolute conveyance of land” (the term “absolute” is defined by Rapalje & Lawrence in their Law Dictionary as meaning “complete, final, perfect, unconditional, unrestricted”), conveyed to his

daughters, Peke and Maria, the land in contest, using the words, "do make, sell, give, convey, release, effectuate and forever quitclaim to the parties of the second part * * * all those certain pieces of land" (here follows a description of the land, including the parcel in question); "To have together with all the things thereupon the houses and appurtenances, rights and privileges as well as the proceeds thereof, either in law or equity, to receive from said lands and from all sources and all things together with the interest and rights appertaining to the party of the first part (shall [46] belong to Peke and Maria and to their representatives and to their heirs and assigns forever)." In this case both the granting and *habendum* clauses of the deed convey the fee forever.

While it is true that there are no words of inheritance in the granting clause, the deed was executed in 1858 prior to the enactment of the statute which adopted the common law and the word "heirs" was not essential to convey a fee simple. *Branca v. Makuakane*, 13 Haw. 499. Even were this not the law in this jurisdiction, the *habendum* being to the grantees and their heirs and assigns, and there being no inconsistency between the granting clause and the *habendum*, the latter would control in the matter of fixing the estate of the grantees as one in fee.

"Where no estate is mentioned in the granting clause, then the *habendum* becomes efficient to declare the intention, and will rebut any implication which would otherwise arise from the omission in this respect in the preceding clause." *Riggin et al. v. Love et al.*, 72 Ill. 553.

Giving to the expressions found in the deed and relied on by plaintiffs all of the force to which they are entitled, the most that can be said of them is that they are ambiguous, and, if given the meaning contended for by plaintiffs, inconsistent with the clearly expressed intent of the parties as found in the granting clause and the *habendum*.

As to the language found in the premises of the deed, which is relied on by plaintiffs as showing that the estate conveyed to the daughters was one for life only, we are of the opinion that such language, if given its proper interpretation, is equally if not more consistent with a fee simple than with a life estate.

Touching the language found in the deed immediately following the *habendum*,—should it be conceded that such language indicates the intention of the parties that the grantees should take a life estate only, with remainder over, we are of the opinion that the attempt to so limit the absolute grant is null and void because utterly inconsistent with both the granting and the *habendum* [47] clauses of the conveyance. *Simerson v. Simerson*, 20 Haw. 57; *Nahaolelua v. Heen*, 20 Haw. 372, 377; *Ray v. Spears' Exr.*, 64 S. W. 413.

“If the deed contains a clause decisively showing the intention of the parties, ambiguities and inconsistencies in other clauses of the deed will not defeat such intention.” 2 Devlin on Deeds, sec. 837.

“In *Cholmondeley v. Clinton*, 2 Jac. & W. 84, which was a case most elaborately argued and consid-

ered, it was said by the court that, where a limitation in a deed is perfect and complete, it cannot be controlled by intention collected from other parts of the same deed. To support this rule of construction, the court cites and comments upon the following cases: *Budd v. Brooke*, 3 Gill, 198, 43 Am. Dec. 321; *Ackerman v. Vreeland*, 14 N. J. Eq. 23; *Wilder v. Davenport*, 58 Vt. 642, 5 Atl. 753; *Cutley v. Tufts*, 3 Pick. 272; *Wilcoxson v. Sprague*, 51 Cal. 640; *Green Bay & M. Canal Co. v. Hewett*, 55 Wis. 96, 42 Am. Rep. 701, 12 N. W. 382." *Carl-Lee v. Ellsberry*, 82 Ark. 209, 101 S. W. 407, 12 L. R. A., N. S., 956, 958.

The fact that the grantor invested the grantees (his daughters) with power to "leave these lands and rights appertaining to whomsoever they may devise, providing it be done in truth and honesty" is strongly indicative, if not conclusive, of the intent of the parties that the grantees were to take the fee. *Ray v. Spears' Exr.*, *supra*.

"So, though a devise to a wife for life, and after her decease, she to give the same to whom she will, passes but an estate for life with a power; yet, if an express estate for life had not been devised to the wife, an estate in fee would have passed by the other words. 8 Vin. Abr. Devise, 4 W. a., pl. 4, p. 234." *Burwell's Ex'rs. v. Anderson, Admr.*, 3 Leigh (Va.) 348, 356.

"A life estate is usually created by words of express limitation, and will not be assumed unless there are such words or their equivalent. If the deed shows by other provisions that the grantor intended

his grantee to hold an estate for life only, such would be its effect. But if there be inconsistent provisions, some indicating power of absolute disposal, which can only be had by the holder of the fee, and others creating a remainder which supposes a life estate, then the words of the *habendum* have a controlling significance." Green et al. v. Sutton et al., 50 Mo. 186, 192.

We are of the opinion that the deed from Alexander Adams, Jr., [48] to his daughters, Peke and Maria, gave them each a fee simple in an undivided half of the land.

F. ANDRADE (LORRIN ANDREWS with him on the brief), for Plaintiffs.

W. F. FREAR and C. H. OLSON (FREAR, PROSER, ANDERSON & MARX and HOLMES & OLSON on the brief), for Defendants.

E. M. WATSON.

RALPH P. QUARLES.

C. W. ASHFORD.

[Endorsed]: No. 879. Supreme Court, Territory of Hawaii. October Term, 1915. Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd and Victor K. Boyd, by Their Guardian *ad Litem*, Josephine Boyd, v. Henrietta Sullivan, John Buckley and Henry Holmes, Trustee Under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Prescilla Alberta Sullivan Clarke, and Robert Kirkwood Clarke, a Minor, Juanita Ellen Clarke, a Minor, and Thomas Walters Clarke, a Minor. Opinion. Filed November 9, 1915, at 9:45 A. M. J. A. Thompson, Clerk. [49]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et al.,

Defendants.

Notice of Decision on Reserved Question of Law.

ACTION TO QUIET TITLE.

To the Honorable, the Judges of the Circuit Court
of the First Judicial Circuit, Territory of
Hawaii.

You will please take notice that in the above-entitled cause, the Supreme Court has rendered the following decision on reserved question of law:

**“DECISION ON RESERVED QUESTION OF
LAW.**

“In the above-entitled cause pursuant to the opinion of the above-entitled court filed on the 9th day of November, 1915, the deed of Alexander Adams, Jr., to his daughters, Peke and Maria, gave them each a fee simple in an undivided one-half of the land.

Dated, Honolulu, T. H., November 20, 1915.

By the Court:

[Seal] (Sgd.) ROBERT PARKER, Jr.,
Assistant Clerk Supreme Court, Territory of Ha-
waii.

By the Court:

(Sgd.) ROBERT PARKER, Jr.,
Assistant Clerk Supreme Court, Territory of Ha-
waii.

(Endorsed and Filed November 20, 1915.) (No. 879.) [50]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

L. 8032.

R. N. BOYD et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et al.,

Defendants.

Decision.

This cause coming for trial on this day, the Court finds from the *remittitur* in the Supreme Court that the questions heretofore submitted to that court have been decided in favor of the defendants. The Court holds that such question is decisive of this case. Therefore the judgment is in favor of the defendant.

Dated, Honolulu, Hawaii, January 12, 1916.

(Sgd.) T. B. STUART,

Third Judge, First Circuit.

[Endorsed]: L. 8032. Reg. ——. Pg. ——. Circuit Court, First Circuit. R. N. Boyd et al., Plaintiffs, vs. Henrietta Sullivan et al., Defendants. Decision. Filed at 9:55 o'clock A. M. January 12, 1916. B. N. Kahalepuna, Clerk. [51]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

January Term, 1915.

MARY KALEIALII, REBECCA LEHIA MILES,
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE, and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants.

Judgment of Circuit Court, Territory of Hawaii.

ACTION TO QUIET TITLE.

This action by petition claiming an undivided one-half interest in certain lots of land lying and being within the City and County of Honolulu, Territory of Hawaii, particularly set forth and described in said Petition, came to the present term when the parties appeared and were at issue to the Court, jury waived.

Said cause having been heard and committed to the

Court it finds for the defendants and that plaintiffs recover nothing by their said suit.

THEREFORE IT IS ADJUDGED that the defendants recover of the plaintiffs their costs taxed at Eight 50/100 Dollars (\$8.50).

Entered this 17th day of January, A. D. 1916.

By the Court:

[Seal]

(S) B. N. KAHALEPUNA,

Clerk of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

O. K.—L. ANDREWS,

Attorney for Plaintiffs.

[Endorsed]: L. No. 8032. Reg. 4. Pg. 498. Circuit Court, First Circuit, Territory of Hawaii. January Term, 1916. Mary Kaleialii et al., Plaintiffs, vs. Henrietta Sullivan et al., Defendants. Judgment. Filed January 17, 1916, at 9:45 A. M. B. N. Kahalepuna, Clerk. Frear, Prosser, Anderson & Marx, 303 Stangenwald Building, Honolulu, Attorneys for Defendants. [52]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

L. 8032.

MARY KALEIALII et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et al.,

Defendants.

Transcript.**ACTION TO QUIET TITLE.****APPEARANCES:**

LORRIN ANDREWS, Esq., FRANK ANDRADE,
Esq., for Plaintiffs.

FREAR, PROSSER, ANDERSON & MARX,
HOLMES, STANLEY & OLSON, for Defendants.

E. K. DWIGHT, Reporter.

Filed at 8:30 o'clock A. M. March 2d, 1916. B.
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*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

ACTION TO QUIET.

L. 8032.

MARY KALEIALII et al.,

Plaintiffs,

vs.

HENRIETTA SULLIVAN et al.,

Defendants.

Transcript.

ACTION TO QUIET TITLE.

On Wednesday, March 31, 1915, at 10 A. M., the above-entitled cause came on for trial before the Hon. T. B. Stuart, Third Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, Lorrin Andrews, Esq., and Frank Andrade, Esq., appearing on behalf of the plaintiffs, and Messrs. Holmes, Stanley and Olson; and Messrs. Frear, Prosser, Anderson & Marx, appearing on behalf of the defendants and the following proceedings were had and testimony taken:

The COURT.—Are you *read* in this case?

Mr. ANDREWS.—Ready for the plaintiff.

Mr. PROSSER.—We ask that the firm of Frear, Prosser, Anderson and Marx be entered of record as assisting the defense.

The COURT.—Let that be entered. What is there in this case?

Mr. ANDREWS.—This is an action to quiet title

brought by Mary Kaleialii, and originally her brother, Robert N. Boyd, but during the litigation he died, and his wife and children, his heirs at law, were substituted in his place by order of Court, so that it is by this brother and sister,— that is, by the heirs of the brother, and the sister, against Henrietta [55] Sullivan, John Buckley, and Henry Holmes, Trustees under the Will of John J. Sullivan; Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke, and Robert Kirkland Clarke, a minor, Juanita Ellen Clarke, a minor, and Thomas Walters Clarke, a minor, these appearing by a guardian *ad litem*, duly appointed by your Honor's predecessor in the case. It is a legal action to quiet title: we have a statutory right to bring it in this jurisdiction.

The complaint reads as follows:

(Mr. Andrews reads Complaint and makes statement.)

The COURT.—Let me understand—the original patentee was Adams Sr. He conveyed to Adams, Jr. Adams, Jr., had two daughters and he conveyed to them by this deed life estates, and it is the children of one of them—it is the children of one of the daughters that bring this suit,—children and grandchildren. How about the other daughter.

Mr. ANDREWS.—The other daughter died; she died a great many years ago, 1890,—and the statute has run; we are not interested in that. We are only suing, of course, for one of the children's interest.

The COURT.—I would like to hear what the de-

fense has,—a statement of the defense.

Mr. OLSON.—If the Court please, the defendants have filed the following answer and plea: (Reads Answer.) As I understand from counsel for the plaintiffs, they claim an undivided half interest in the premises in this proceeding, so it is clear to the Court?

Mr. ANDREWS.—Yes.

Mr. OLSON.—It is merely so it will be clear to the Court that that is the only issue involved. If the Court please, it would perhaps be just as well to state at this time that it will be our purpose here to show to your Honor that the [56] deed in question under which the plaintiff's claim, was not a conveyance of a life estate only to these two children, Becky or Peke and Maria, but that it conveyed the premises in fee simple to the two of them, and that when Peke conveyed her interest to Maria, and Maria subsequently conveyed to the predecessors in title of the defendants here, that a fee simple estate was transferred on through these various parties down to the present defendants, so that contrary to the contention of the plaintiffs, we claim that an estate in fee simple was conveyed by the original deed of Alexander Adams, Jr., to these two people, Peke and Maria.

The COURT.—They claim that under the provisoes, one of those provisoes, that it didn't convey the fee. I would like to have that proviso read again.

Mr. PROSSER.—I think that the questions of law involved in the interpretation of that deed

should be first decided; that argument be heard and the Court make up his mind whether a fee was transferred or simply a life estate, as contended by counsel.

Mr. ANDREWS.—If they admit our case, I will be very glad. We understand that the whole question is the construction of this deed. I told Your Honor yesterday that it was more or less a question of law. The deed is in the Hawaiian language; it naturally has to be translated to the best of our knowledge in English. It really rests with your Honor to construe it as to whether there is—whether we have a case or not.

(Argument.)

Mr. ANDRADE.—Under the circumstances, if the defendants are going to rely on the construction of this deed solely, will they admit that the land in question was a part of the land awarded to the Patentee, Alexander Adams, by the patent and [57] award which we claim.

Mr. PROSSER.—We cannot make any admissions at all. As a matter of fact, we have a number of other defenses besides that.

Mr. ANDRADE.—Which are not set up in your Answer?

Mr. PROSSER.—Yes. I think, if the Court please, in a case like this, it is advisable to let the plaintiff prove their case.

Mr. ANDREWS.—Mr. Peters take the stand.

Testimony of Henry Peters, for Plaintiffs.

HENRY PETERS, sworn as a witness on behalf of plaintiffs, testified as follows:

Direct Examination.

(By Mr. ANDREWS.)

Mr. ANDREWS.—Your Honor, we have a translation of the deed attached to the complaint, if your Honor cares to see it.

Q. What is your name? A. Henry Peters.

Q. And what is your business, Mr. Peters?

A. Clerk, Land Office.

Q. And as such you have charge of the Land Commission Awards and the royal patents issued by this Government? A. Yes.

Q. Have you with you Royal Patent No. 27, I believe, to Alexander Adams? A. Yes.

Q. Will you open your book please—do you require us to have that read in to the record?

Mr. PROSSER.—No.

Mr. ANDREWS.—Will you admit that Royal Patent 27 includes the land in question—covers the land in question, to Alexander Adams, of course.

Mr. OLSON.—Is that in Hawaiian or English?
[58]

Mr. ANDREWS.—English.

Mr. OLSON.—If the Court please, I can make my objection to it right now, if you want. I object to the introduction in evidence of the Royal Patent on the ground that it does not appear by the evidence sought to be introduced that it covers the land set

(Testimony of Henry Peters.)

forth and described in the complaint or any portion thereof.

(Argument.)

The COURT.—It will be allowed to be introduced; give you an exception.

Mr. ANDREWS.—Will you read it please—I would like to have a typewritten copy made and have that put in.

Q. Who is that royal patent to?

A. Alexander Adams.

Q. And of what land,—give the names of the land please?

A. Land situated in Honolulu, doesn't specify any particular location. It says: all that certain piece of land situate at Honolulu, Island of Oahu, and described by survey.

Q. Now the date of the royal patent is what, please? A. May 21, 1849.

Mr. ANDREWS.—It is agreed between the parties that counsel for plaintiffs instead of reading it into the record, may file a copy of said royal patent.

(Copy of Royal Patent to be marked exhibit "A.")

Mr. OLSON.—Subject to our objection and exception as to the admissibility of the evidence.

The COURT.—What record page is that to be found on?

Mr. ANDREWS.—Vol. 1 of Patents, p. 27; same number as the patent.

Q. Will you tell us briefly what were they getting from the entire patent,—what portion of Honolulu

(Testimony of Henry Peters.)

that land is situated in?

Mr. OLSON.—Object, already asked and answered, and in the second [59] place, the record speaks for itself.

(Argument.)

Mr. OLSON.—We make an admission that it covers the property set forth and described in the royal patent.

Mr. ANDREWS.—Q. And that that is property located on Hotel Street?

A. Well, the survey says so.

Mr. PROSSER.—Then file your survey. All you have to do is to file your copy of the patent.

Mr. ANDREWS.—Q. Have you Land Commission Award book, Mr. Peters, too? A. Yes.

The COURT.—Do I understand that you agree that it covers the property in question?

Mr. PROSSER.—We do not. Our objection to it is on the ground that there is nothing to show that it does, and your Honor let it in and we excepted.

Mr. ANDREWS.—Q. Will you look at Land Commission Award 801?

A. Yes, sir—Alexander Adams.

Q. That is dated when, please?

A. January 29, 1849.

Q. And that is an award of what lands, Mr. Peters, until you get the description by metes and bounds?

Mr. OLSON.—Subject to the same objection that we made to the admissibility of the Royal Patent, it will be admitted by defendants that the Land

(Testimony of Henry Peters.)

Commission Award, concerning which the witness is now being questioned, describes the same—is the same description of land as the description in the royal patent, which will be supplied later by typewritten copy.

Mr. ANDREWS.—That is all Mr. Peters; it being understood that either or both can be offered in evidence or are offered in evidence subject to our filing a typewritten copy. [60]

Mr. PROSSER.—Do you offer them both?

Mr. ANDREWS.—Yes.

Mr. PROSSER.—Then we make the same objection to the admissibility of that that we did to the admissibility of the royal patent.

The COURT.—Same ruling, same exception.

(Copy of L. C. A. to be marked Plaintiff's Exhibit "B.")

Mr. ANDREWS.—That is all; call Mr. Kopa.

Testimony of George C. Kopa, for Plaintiffs.

GEORGE C. KOPA, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. ANDREWS.)

Q. What is your name? A. George C. Kopa.

Q. What is your business, Mr. Kopa?

A. Deputy in the Record Office of the Territory of Hawaii.

Q. And have you in your custody and control the record of all conveyances filed in your office.

A. Yes, sir.

(Testimony of George C. Kopa.)

Q. Have you with you Liber 4? A. I have.

Q. Turn to page 214, and tell me what deed you find on that page, Liber 4.

A. I find a deed made by Alexander Adams, to Alexander Adams, Jr.

Q. Dated what date, please?

A. Dated the 22d day of June, 1850.

Q. Is it in English or Hawaiian?

A. In English.

Q. Will you please read the deed,—we offer it in evidence.

Mr. PROSSER.—To expedite matters, can't it be stipulated that counsel will furnish copies of these documents. The proper way is to come here prepared with certified copies that they are going to use; not to take up the time of the Court in reading this into the record. [61]

Mr. ANDREWS.—The short way is to offer the originals. If they are allowed, then we will offer the typewritten copies.

Mr. OLSON.—It is so short that it might as well be read. We object to it on the ground, on the same ground that was offered before as to the admissibility of the royal patent and the land commission award.

The COURT.—Same ruling, same exception.

Mr. ANDREWS.—Read it, please.

Deed, June 22, 1850, Alexander Adams to Alexander Adams, Jr.

A. (Reading:)

“Know all men, that I, Alexander Adams, of

(Testimony of George C. Kopa.)

Oahu, Hawaiian Islands, have given and by these presents do give, grant, devise and bequeath to my son Alexander Adams, Jr., his heirs, executors, administrators or assigns, all my right and title to a certain portion of my land allotment in the town of Honolulu, described as follows: Commencing at John Duke's house along the Street SE. by E. $\frac{1}{2}$ 46 feet 6 in., thence NE. $\frac{1}{2}$ N. 62 feet, thence NW. by W. 44 feet and thence SW. $\frac{1}{2}$ W. 72 feet to the place of commencement.

TO HAVE AND TO HOLD by him, his heirs, executors, administrators or assigns for his or their own proper use and benefit forever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22d day of June, in the year 1850."

Mr. OLSON.—In order to diminish the record, we will admit that it is shown to be properly acknowledged; there is no necessity of reading the acknowledgment in the record.

WITNESS.—Signed Alexander Adams, in the presence of James Ruddack and Andr. Auld, witnesses. Acknowledged on the 22d day of August, 1850, before Asher M. Bates, Registrar of Conveyances. Recorded on the 22d day of August, 1850, at 12 o'clock noon.

Mr. ANDREWS.—Q. Now, Mr. Kopa, have you got with you Vol. 11, Conveyances, Liber 11?

A. Yes, sir. [62]

Q. Will you turn to page 75 and tell me what you find there?

(Testimony of George C. Kopa.)

Mr. OLSON.—You have an exact copy of that deed attached to the complaint.

Mr. ANDREWS.—Yes. I just want to get it in evidence, that's all.

A. I find a deed made by Alexander Adams, Jr., to Peke and Maria, dated September 15, 1858.

Mr. ANDREWS.—Will counsel now admit that exhibit "A," attached to the amended complaint, is a correct copy of that deed in Hawaiian?

Mr. OLSON.—Yes, we will admit that.

Mr. ANDREWS.—Then, your Honor, we offer this deed in evidence and ask leave to use for the purposes of this case, the exhibit "A" attached to the complaint, which is admitted to be a correct copy of the deed, instead of reading the deed into the record.

Mr. OLSON.—To which offer we will make the same objection on the ground of materiality; and that it is not shown that it is any part of the land set forth or described in the complaint.

(Argument.)

The COURT.—Overruled; excepted to.

(Received and marked Plaintiff's Exhibit "D.")

Mr. ANDREWS.—Is it now admitted—do you wish to admit the correctness of our translation or not?

Mr. OLSON.—I think it is practically correct.

Mr. PROSSER.—I think we will admit the correctness of the translation of the deed attached to the complaint.

Mr. OLSON.—It will be stipulated that the translation attached to the complaint,—the amended com-

(Testimony of George C. Kopa.)

plaint, as exhibit "B," is a correct translation of the deed, a copy of which is attached to the amended complaint as exhibit "A." [63]

Mr. ANDREWS.—And which is the same deed which has been offered in evidence in Liber 11, page 75, of Conveyances?

Mr. OLSON.—Yes.

Mr. ANDREWS.—That is all, Mr. Kopa, thank you. Now, Mrs. Kaleialii, you take the stand, please.

Testimony of Mary Kaleialii, for Plaintiffs.

MARY KALEIALII, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. ANDREWS.)

Mr. ANDREWS.—Do you wish to speak Hawaiian on the stand or not?

A. I think Hawaiian is better for me.

Mr. OLSON.—She speaks English well.

Mr. ANDREWS.—I think the witness has a right—

Mr. OLSON.—If the Court please, it is going to take more time. When the time arrives, and it appears that the witness is having difficulty with the English language, we can get in the Interpreter. Until that time appears, it is going to be more satisfactory to every one to have her go on in the English language.

The COURT.—Let the Interpreter take a seat and watch her.

(Testimony of Mary Kaleialii.)

Mr. ANDREWS.—Q. Mrs. Kaleialii, you are one of the plaintiffs in this action? A. Yes.

Q. You are bringing this action, you understand?

A. Yes.

Q. And who was your father and who was your mother? A. My mother was Peke Stone.

Q. And who was your father?

A. Ed. Boyd,—I cannot really say.

Q. There is some question as to whether it was Mr. Stone or Mr. Boyd? [64] A. Yes.

Q. Who was the father of your mother?

A. Alexander Adams, Jr.

Q. And do you know who his father was—who was the father of Alexander Adams, Jr.?

A. Captain Adams.

Q. And what was his first name?

A. Alexander Adams.

Q. Did your mother have any children besides yourself? Myself and Robert.

Q. And what was he called—he is living or dead, your brother? A. He is dead.

Q. And when did he die?

A. Died in the month of September, but the day I cannot remember.

Q. The month of September last year?

A. Yes.

Q. Now, is your mother living or dead?

A. She is dead.

Q. And Alexander Adams, Sr., is he living or dead? A. Jr.?

Q. Alexander Adams, Jr.? A. He is dead.

(Testimony of Mary Kaleialii.)

Q. When did your mother die?

A. She died at my home.

Q. When did she die?

A. She died on the 5th of July.

Q. Last year? A. Yes.

Q. Now, did Alexander Adams, Jr., die before your mother or after your mother? A. Before.

Q. How long before, do you remember?

A. I can't remember.

Q. It was a long time? A. Long time.

Q. Now, did Alexander Adams, Jr., have any children besides your mother? A. Only two. [65]

Q. Who was the other one? A. Maria Boyd.

Q. And is she living or dead? A. Dead.

Q. Did she die before or after your mother?

A. She died before my mother.

Q. Now in Hawaiian language, what would be your mother's name—how would she spell it? A. Peke.

Q. Do you know how to spell it? A. P-e-k-e.

Q. And her sister, what was her name—her first name? A. Maria.

Q. And that would be written in Hawaiian the same as it is in English, or not? A. Malaea.

Q. Would be the same, or different?

A. In Hawaiian it would be Malaea—in English it would be Maria.

Q. Now, did Alexander Adams have any other children besides Peke and Maria? A. No other.

Q. Up to the time of his death? A. Yes.

Q. And where did your mother die—where was she when she died—where was your mother living when

(Testimony of Mary Kaleialii.)

she died? A. She was living with me.

Q. In Honolulu? A. In Honolulu.

Q. Now did you know Alexander Adams during his lifetime—did you know your grandfather? [66]

Mr. OLSON.—Object to that, assumes something that is not yet proven—that this Alexander Adams is her grandfather.

(Argument.) Withdraw the objection.

Mr. ANDREWS.—Q. Did you know your grandfather during his life, Alexander Adams? A. Yes.

Q. Where did he live? A. At Kaalaa.

Q. Where is that? A. Up Pauoa.

Q. Do you know a place known as Adams Lane in Honolulu—now known as Adams Lane? A. Yes.

Q. Where is that in connection with Hotel Street in Honolulu?

A. The Young Hotel is right makai side, then comes Hotel Street, and then there is a small road which runs up from Hotel Street, that is Adams Lane.

Q. Now, that property that is—that we spoke of, that Hotel Street is makai of and Adams Lane is on one side of—do you remember who had possession of that property during the life of Alexander Adams, Jr.?

Mr. OLSON.—Object, incompetent, irrelevant and immaterial; having no bearing on any issue in this case.

(Argument.)

Mr. ANDREWS.—Q. Who was in possession of that property, the property which she describes as

(Testimony of Mary Kaleialii.)

being mauka of the Young Hotel, where the Young Hotel now is, and bounded on one side by what is known as Adams Lane?

Mr. OLSON.—She hasn't described any property being there—she simply said Adams Lane ran off of Hotel Street mauka of the Young Hotel—she hasn't said anything about any property.

Mr. ANDREWS.—Q. I asked her who had possession of that property—mauka of the Young Hotel—do you remember who had [67] possession of that during Alexander Adams' life?

Mr. OLSON.—Same objection and exception.

A. Alexander Adams.

Q. And do you know where Union Street now is?

A. Yes.

Q. And Hotel Street? A. Yes.

Q. And the property between what is known as Adams Lane and Union Street now, on the mauka side of Hotel Street, do you remember in whose possession that property was during the lifetime of Alexander Adams?

A. I knew—Alexander Adams' property there.

Q. Did you know Alexander Adams, Sr., at all Captain Adams? A. Captain Adams?

Q. Yes, Captain Adams, did you know him?

A. Yes.

Q. Where did he live?

A. He lived right next to Alexander Adams place, just about by the next side—in the same place.

Q. Now where is the property that Captain Adams

(Testimony of Mary Kaleialii.)

lived in now—what is on that property now, where Captain Adams lived?

A. I couldn't tell you, because I do not know who is on it. I do not know who is in possession there.

Q. What was Alexander Adams Jr. doing to this property that was near Hotel Street during the time that he had it?

A. We all lived there—that was our home.

Q. And how long was that your home—how long—for how many years did you live on this property that you have spoken of as your home, between Adams Lane and Union Street and what is now Hotel Street?

Mr. OLSON.—Object to that, if the Court please—assuming [68] facts not in evidence.

(Argument.)

The COURT.—It is claimed that this tends to prove the issues—I don't know whether it does or not. I am mixed on all of those times and I am ignorant of them—I presume counsel is going forward in good faith—I do not know. Therefore I shall have to overrule your objection at this time and give you an exception.

A. We used to live there with our parents, and when we were tired of living down there, we used to go up Pauoa—we were changing back and forth all the time. We were raised up there from children, all of us children were brought up there.

The COURT.—Ask her if she can answer as to the number of years.

A. I couldn't tell you the number of years it is; we lived there a long time.

(Testimony of Mary Kaleialii.)

Q. Now did you know the property that the old Captain Adams gave to his son Alexander Adams there on Hotel Street, what is now Hotel Street—do you know that property?

Mr. OLSON.—Object, assumes something not in evidence, therefore it is immaterial; does not tend to prove any of the issues in this case; attempting also to prove something by this witness—the deed is the best evidence; it is the offer of secondary evidence.

(Argument.)

The COURT.—That is not what your question was, Mr. Andrews; now put it again.

Mr. ANDREWS.—Q. Did you know of Captain Adams giving some property to your grandfather, Alexander Adams, Jr., on Hotel Street or what is now Hotel Street?

A. Yes.

Q. Now that property—what was done with that—what did [69] your grandfather do with that property which his father gave him?

A. We stayed there.

Q. Was there a house on it?

A. There was a house, and we used to live there, with my sisters and brothers and the whole family.

Q. Can you tell us about where it is now, describing the present surroundings, the different buildings that are there, can you tell us in relation to the present buildings, where that house was?

A. It is on the Ewa side of Steiner's stone building.

Q. That is the building on Hotel Street now?

A. Yes.

(Testimony of Mary Kaleialii.)

Q. And was Hotel Street cut through at that time—at the time that Alexander Adams gave this property to his son, Alexander Adams, Jr.?

A. No.

Q. Now when you say “we stayed there”—tell us who stayed there—who do you mean by “we.”

Q. My grandfather, our parents, and we children.

Q. Well now, you say your grandfather is Alexander Adams, Jr.? A. Yes.

Q. Who do you mean by “our parents”?

A. Peke and Maria.

Q. And you mean by grandfather—yours and your brother’s and Maria’s children’s? A. Yes.

Q. How long ago do you remember that you—withdraw that—you are not living there now, are you?

A. No.

Q. How long ago that you last lived there, do you know—any of your family?

A. We all got married and each one went away—we got married and each one went away.

Q. Then you have not lived there since your marriage? A. No.

Mr. ANDREWS.—That is all.

Cross-examination of MRS. MARY KALEIALII.
(By Mr. PROSSER.)

Q. Mrs. Kaleialii, how long ago were you married?

A. What do you mean, the first—how long was it I was married—from my first husband to this one?

A. Yes.

Q. I have forgotten how it is, it has been so long

(Testimony of Mary Kaleialii.)

that I have forgotten the time.

Q. And you were married to him in Honolulu, were you? A. I was married at Heeia Plantation.

Q. About how old were you when you were married the first time? A. I was 19.

Q. And at the time that you were married, were you married as Maria Stone or Maria Boyd?

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial, not proper cross-examination.

The COURT.—Let it be answered; exception given.

A. Boyd.

Q. And you had always been known as Maria Boyd in your family had you not?

Mr. ANDREWS.—Objected to on the same ground; incompetent, irrelevant and immaterial; not proper cross-examination.

The COURT.—Overruled and excepted to.

A. Not Maria, but Mary Boyd.

Q. Do you remember Mr. Stone at all?

A. I do not.

Q. And Mr. Stone was your mother's husband, was he not? A. He was. [71]

Q. And Mr. Boyd never was married to your mother?

Mr. ANDREWS.—We object; incompetent, irrelevant and immaterial; not proper cross-examination.

(Argument.)

Mr. PROSSER.—Are you willing to admit for the purpose of this suit that Mr. Boyd was her father?

(Testimony of Mary Kaleialii.)

Mr. ANDREWS.—No, but that is immaterial.

Mr. PROSSER.—It is extremely material upon the legal interpretation of the deed before this Court.

(Argument.)

The COURT.—Let the question be answered.

Mr. ANDREWS.—Exception.

A. No.

Q. Was Robert Boyd that you speak of, older or younger than you? A. Much younger than I am.

Q. And where was Mr. Stone at the time of the birth of Robert? A. He was away.

Q. And how long had he been away?

A. That I couldn't tell you.

Q. Well, I mean a number of years or a short time?

A. I never knew him—I heard about him and that was all.

Q. Who was the father of Robert?

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial; hearsay. It is certainly not cross-examination.

(Argument.)

The COURT.—You have got the Court in a place where he does not know what to do. I am going to allow it *go to* in and give you an exception, and if I am wrong about it—when you come to argue this case, why I shall certainly not consider anything that is not relevant.

Mr. ANDREWS.—We except, if the Court please.

The COURT.—Let it go in and you have your exception. [72]

(Question read.)

(Testimony of Mary Kaleialii.)

Mr. ANDREWS.—That is, of course, if she knows.

The COURT.—Yes, if she knows.

A. Mr. Boyd.

Q. Ed. Boyd? A. Yes.

Mr. PROSSER.—That is all.

Mr. OLSON.—Just a moment, before you close—may I ask an additional question to save time?

Q. How much older were you than Robert Boyd—how many years older—about how old were you when he was born, 10 or 12 years old?

A. I think I was between eight and nine.

Q. Eight or nine years old—do you remember the time he was born?

A. Yes, I remember the time he was born.

Q. Now, had Mr. Stone been here in Honolulu for say three or four years before that?

The COURT.—She has answered that three or four times—she didn't know him.

Mr. OLSON.—That is all.

Redirect Examination of Mrs. MARY
KALEIALII.

(By Mr. ANDREWS.)

Q. What do you know of Robert's birth—who was Robert's father, is simply from hearsay, is it not?

Mr. OLSON.—Object, on the ground that it is a leading question. (Argument.)

The COURT.—I want you to ask leading questions. That question will stand. [73]

A. From hearsay.

Mr. ANDREWS.—That is all.

(Testimony of Mary Kaleialii.)

Recross-examination of Mrs. MARY KALEIALLI.

(By Mr. PROSSER.)

Q. You heard that, did you not, from the members—from your mother and members of your family, did you not? A. From his mother.

Q. From whose mother?

A. From his mother.

Q. Robert's mother? A. Yes.

Mr. PROSSER.—That is all.

Mr. ANDREWS.—That is all.

Testimony of Mrs. Robert N. Boyd, for Plaintiffs.

Mrs. ROBERT N. BOYD, sworn as a witness on behalf of the plaintiffs, testified as follows:

Direct Examination.

(By Mr. ANDREWS.)

Q. Mrs. Boyd, your husband—you are a widow now, are you not? A. Yes.

Q. And your husband's name was what?

A. Robert Napunako Boyd.

Q. And do you know what relation he was to Mrs. Kaleialii that just went on the stand?

A. Yes.

Q. What was his relation to her?

A. Brother.

Q. When did Robert, your husband, die, Mrs. Boyd? A. September 9, the year 1914. [74]

Q. And where were you married to Mr. Robert Boyd?

A. Right here in Honolulu, Auwaiolimu, Pauoa.

Q. By whom?

(Testimony of Mrs. Robert N. Boyd.)

A. By Bishop Wallace of the St. Andrews Cathedral.

Q. Episcopalian minister, Mr. Stanley says,—did you have any children by your marriage with Mr. Boyd? A. Yes.

Q. Now, will you please give their names and ages, of your children?

A. Rebecca Leahia Boyd.

Q. How old is she about? A. 24.

Q. And is she married? A. Yes.

Q. To a Mr. Miles? A. T. T. Miles.

Q. Then the next child?

A. That is Annie K. Boyd.

Q. How old is she? A. Twenty.

Q. And the next? A. Robert N. Boyd.

Q. How old is he? A. Eighteen.

Q. And the next?

A. Victor K. Boyd.

Q. How old is he?

A. Fifteen, in a month's time, sixteen.

Q. And those children that you name, Rebecca, Annie, Robert and Victor, they are each living?

A. Yes.

Q. And they are the only children?

A. The only children.

Q. Have you any children who have died?

A. No.

Q. Before he married you, do you know whether your husband was ever married before? A. No.

Q. You know he wasn't married?

A. He wasn't married.

(Testimony of Mrs. Robert N. Boyd.)

Q. Now, when your husband died, did he leave any will? [75] A. No.

Mr. ANDREWS.—That is all.

Mr. PROSSER.—No questions.

Mr. ANDREWS.—That is all, thank you, Mrs. Boyd. We have only one more witness, your Honor, and he is not present. He is a surveyor. May we have five minutes recess?

The COURT.—Yes.

(Recess.)

Mr. ANDREWS.—If the Court please, the surveyor in calling my *attention the* survey, has pointed out an error, and I see by the original complaint that it is a clerical error. The third course in our amended complaint, “44° 30' 63.7 feet to the new line of Hotel Street,” should read 53.7 instead of 63.7.

Mr. OLSON.—We have no objection to the amendment of the amended complaint, so it will be 53 instead of 63.

(Amended complaint corrected.)

Testimony of Robert D. King, for Plaintiffs.

ROBERT D. KING, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. ANDREWS.)

Q. Your name, please.

A. Robert D. King.

Q. Mr. King, what is your business?

A. Surveyor.

Q. And how long have you been a surveyor?

(Testimony of Robert D. King.)

A. About ten years.

Q. Connected at present with what office?

A. Territorial Survey Department. [76]

Q. Did you make the description—I hand you the description of the premises on page 2 of the amended complaint, which has been amended by changing 63 to 53,—did you make that description by metes and bounds prior to the beginning of this suit?

A. I made it about three years ago.

Q. That was your survey?

A. Yes, my description.

Q. Now will you just describe where that property is and is near—

A. Perhaps I had better explain how I wrote the description.

Q. If you will.

A. Judge Andrade handed me a copy of the deed and asked me to write the description below the bare description of it to more properly locate the land described in this deed, and studying the records and government survey maps on file in our office, I drew up the description as you have it there.

Q. Now, will you tell us where that property is now?

Mr. OLSON.—Object, on the ground that no foundation has been laid; it has not even been shown what property he surveyed.

(Argument.)

Mr. ANDREWS.—All right—will you tell me please, accepting the suggestion of counsel on the other side, from what deed you made the first,—you

(Testimony of Robert D. King.)

first made this investigation?

A. I haven't got the one handed to me by Judge Andrade, but I made a copy of it in my records. It is a deed from Alexander Adams to Alexander Adams, Jr., dated June 22, 1850. Doesn't state whether it is recorded in my memorandum.

Q. And did you look up the royal patent and the land commission award to Alexander Adams, Sr.?

[77] A. I did.

Q. When making your investigation?

A. I didn't bother going into the royal patent, I just examined the L. C. Award.

Q. And is this property that you made the description of covered by the award in question?

Mr. OLSON.—Object, on the ground that it is not the best evidence. It is a question of law.

(Argument.)

Mr. ANDREWS.—Q. Do you know where the property is that was comprised in the Land Commission Award?

A. From the records on file in the Government Survey Office.

Q. You looked them up?

A. Yes, the description of the award, and as it is located on our maps.

Q. Have you the map here? A. Yes.

Q. That is the original survey map?

A. It is an original map, not the original survey of the award, though.

Q. No, I mean the original map—will you show us on this map where this property is located?

(Testimony of Robert D. King.)

A. I will show you where the award is. (Witness shows.)

Q. Let us have that again?

A. This map shows the award to Alexander Adams, Sr., on Hotel Street between Adams Lane and Union, and shows the entire award as originally given to Alexander Adams.

Q. And is marked how on this map?

A. Marked L. C. A. 801, A. Adams.

Q. Now, will you please show us where the description of the property is, in regard to this property?

A. Well, this description you can see is rather indefinite. It says: "Commencing at John Duke's house along the street [78] SE. by E $1\frac{1}{2}$ 46 feet 6 inches, thence NE. $1\frac{1}{2}$ N 62 feet thence NW. by W 44 feet and thence SW. $1\frac{1}{2}$ W 72 feet to the place of commencement." Now, the only thing I had to identify this description in connection with the Adams award was that fact that it was supposed to be a portion of Alexander Adams' property, or from Alexander Adams to somebody else, and refers to John Duke's house. Now John Duke,—this map shows also an award to John Duke and wife,—

Mr. OLSON.—Now if the Court please, I object to the witness testifying in regard to any property owned by John Duke as shown on this map on the ground that that is hearsay evidence; the witness does not testify of his own knowledge at all.

The COURT.—We are trying to get a starting point.

WITNESS.—That is the hardest thing to do.

(Testimony of Robert D. King.)

The COURT.—I will overrule your objection. Go on now.

Mr. OLSON.—My objection is that it is calling for hearsay testimony; testimony not within the witness' own knowledge.

(Argument.)

The COURT.—Overruled and excepted to. Now, go on.

WITNESS.—To identify this description I had to get—the point of commencement refers to John Duke's house, and I had to know where Alexander Adams kuleana was. There is a reference to a monument, survey monument, John Duke's house at that time. In taking this map here, it shows the award to Alexander Adams, and the award to John Duke, and the map also shows a house on there,—

Q. On there, meaning John Duke's?

A. John Duke's award. So I adopted that as the initial point of this survey here; and of course it is described by points of the compass, and I reduced that to degrees of the circle. I plotted that survey on this map here, and it [79] fits very closely to the fences and other buildings as shown on this map (pointing).

The COURT.—What fences and other buildings?

A. Fences along here (pointing).

Q. Along whose property?

A. On a portion of the Adams award.

Mr. OLSON.—I move to strike the testimony of the witness relating to the location of the Duke premises and the Duke house, on the ground that it is hear-

(Testimony of Robert D. King.)

say testimony; not within the knowledge of the witness himself, and based entirely upon a map which is not in evidence,—which is not the best evidence.

(Argument.)

The COURT.—The witness is speaking from a Territorial map and it is not to be classed as hearsay evidence. Objection overruled.

Mr. OLSON.—Note an exception.

Mr. ANDREWS.—Q. Did you make any other investigations besides the maps, as to the John Duke house?

A. I looked up the description of survey in the award to John Duke. I do not recollect just now, it is three years ago since I wrote that,—I do not recollect just whether I saw that house on the original award or not. But my recollection is that there was something there, that house. These original awards had sketch plans attached to them, and they had such details as houses, or ditches or fences, or anything like that.

Mr. OLSON.—I move to strike the evidence of the witness in response to the last question, on the ground that it is hearsay entirely, and is not the best evidence.

(Argument.) [80]

The COURT.—I think that this tends to prove the issue, and it may go in. I do not know how conclusive it will be,—I am not talking about the weight of the evidence. The question is does it tend that way. The motion will be overruled.

Mr. OLSON.—Exception.

(Testimony of Robert D. King.)

The COURT.—This map, as I understand,—it is a map now in the Territorial Office? A. Yes.

Q. Official map?

Mr. ANDREWS.—There is always difficulty in offering these maps in evidence. They won't allow them outside of the office. We have here a map which was made by Mr. King, but I believe—

The COURT.—Is it a copy?

WITNESS.—It is a tracing of a portion of this map.

Mr. ANDREWS.—And Mr. King can on that identify the same premises,—if you have no objection.

Mr. OLSON.—I object to the map being introduced in evidence, having no objection to the substitution of the tracing of the map. It is a difficult thing to put these official maps in the record and taking them out of the archives, if it is an official map,—but I object to the offer of the map if it is offered in evidence.

The COURT.—You object to the original, but you do not object to that being substituted?

Mr. OLSON.—I object to the map on the ground that there is no evidence showing that this is the official map; no evidence whatever that it is a map of any of the premises involved in the issues of this case. No evidence whatever that it is a map, a true map, or an official map of any of the premises described in the complaint or involved in this case, or [81] any premises bearing upon the issues involved in the case.

The COURT.—I understood the witness to say that

(Testimony of Robert D. King.)

this is an official map; it is kept in the office of the Registrar.

Mr. OLSON.—It is to be borne in mind that it is an official map only because the law makes it so.

(Argument.)

The COURT.—If it is kept in the Survey Office of the Territory and used as an official map, I would not go back farther than that to inquire whether the man who made the map knew what he was doing or not. I would simply stop right there. I think that is sufficient until the map is successfully assailed. Now I have your objection to that,—as to the map itself, and I have overruled that, but you do not object to this copy being put in. It will be allowed to be introduced.

Mr. OLSON.—No. I wish to add to my objection that it is not the best evidence, and hearsay.

(Map received and marked Plaintiff's Exhibit E.)

Mr. ANDREWS.—We have offered this map in evidence, and offer it by number also.

WITNESS.—Registered Map 1387.

Mr. OLSON.—At this time, in view of the fact that we have consented to the substitution of this tracing in place of the other map, I wish to stipulate that if it becomes important in our opinion to have the original map referred to either in this court or on appeal, that we shall have permission to have it produced before the Court at which the issue arises?

Mr. ANDREWS.—No objection to that.

WITNESS.—I want to call attention to the fact that there are things on this that are not on the official map.

(Testimony of Robert D. King.)

Mr. PROSSER.—Is there anything on that map about the line of [82] Hotel Street? A. Yes.

Mr. ANDREWS.—Q. Well take up the big map and we will discuss the tracing, Mr. King, if you please? Now the description that you made, Mr. King, of the premises which you have identified as being the same in the complaint,—will you indicate that on this tracing by the letters a, b, c, d, or more if you have to,—just the boundaries.

A. I will shade it in in pencil.

Q. Well, shade it in in pencil, if you will please?

A. (Witness writes.)

Mr. OLSON.—I suggest that that be further identified by the letter X, not only the pencil lines of the lot that he has just shaded with pencil.

Mr. ANDREWS.—Q. Now I take it Mr. King that that—

Mr. OLSON.—In order to eliminate the necessity of repeating my objection in each case, I ask that counsel stipulate that my objection to this witness' testimony already interposed will be allowed to stand to his whole line of examination with reference to these premises and any testimony from this map which was just introduced in evidence, and will the Court allow me an exception.

Mr. ANDREWS.—We have no objection.

The COURT.—Yes, I will allow you to do that.

Mr. ANDREWS.—Now I hand you again page 2 of the complaint beginning at a point reading: “Beginning at a point,” and finishing, “area 2220 square feet,”—do I understand that that is correctly de-

(Testimony of Robert D. King.)

scribed on this tracing by your shaded—in portion?

A. Yes, approximately as you can make it upon a tracing. Covers the land I intended to describe in that description. [83]

Q. Now Mr. King,—now then, let us—will you again repeat, Mr. King, what was the deed that you got, so there will be no questions, from Judge Andrade, and from which you made this description as you tell us, and which is now apportioned on the tracing?

A. It is a deed from Alexander Adams of Oahu, to Alexander Adams, Jr.

Q. Dated when?

A. June 22, 1850,—that is the copy I made from the deed Judge Andrade handed me, made for my own use.

Q. Do you know what book of conveyances that was registered in?

A. I have no memorandum of that.

Q. That is all—Now that property is situated where, as between Hotel Street, Adams Lane and Union Street at the present time?

A. Situated on the mauka side of Hotel Street, the initial point of the survey being, according to my description, 137.6 feet from the east corner of Hotel and Union Streets, southeast.

Q. And then running in what direction from Union Street from the point near Union Street?

A. Southeast.

Q. Towards Adams Lane?

A. Towards Adams Lane,—a portion of this L. C.

(Testimony of Robert D. King.)

A. 801 to Adams, shown in the government survey.

(Adjourned until 2 P. M.) [84]

Cross-examination of ROBERT D. KING.

(By Mr. PROSSER.)

Q. Mr. King, I understand that in getting at your description of this property contained in the complaint, you used this copy of a deed from Alexander Adams Jr., to Peke and Maria, dated the 15th day of September,—I will change that question—did you refer to the deed from Alexander Adams Jr., to Peke and Maria dated the 15th day of September, 1858?

A. No, sir.

Q. Did not at all? A. No, sir.

The COURT.—What deed is that?

Mr. PROSSER.—The deed which they rely upon is contained as an exhibit attached to the complaint marked exhibit “B”; that is a translation of it to which we are referring at this time, from Alexander Adams Jr., to Peke and Maria. I am asking him if he considered the description attached to that deed in getting up the description: “Commencing at John Duke’s house along the street SE. by E. $\frac{1}{2}$ 46 feet 6 inches, thence NE. $\frac{1}{2}$ N. 62 feet thence NW. by W. 44 feet and thence SW. $\frac{1}{2}$ W. 72 feet to the place of commencement,”—that is the description.

WITNESS.—I never saw any such deed. All I had was that one deed from Alexander Adams to Alexander Adams, Jr.

Mr. PROSSER.—Q. Now take the copy of the deed attached to the complaint here—I will ask you if you can, on your map there, point out the place of

(Testimony of Robert D. King.)

commencement of the survey? Now the description contained in this deed is as follows: "Commencing at John Duke's house,"—where is John Duke's house?
[85]

A. Why, I took it to be this corner here (pointing).

Q. Where is John Duke's house?

Mr. ANDREWS.—I submit he has answered it; he has marked it on the map.

Mr. PROSSER.—Q. Is there anything to indicate either on that map or any other map, where John Duke's house is located?

A. Why as I explained in my other evidence that I arrived at the conclusion that that was possibly John Duke's house from the fact that that is an award to John Duke; and the award sets forth in its preamble,—“house lot of John Duke.”

Q. Then did you start at a point in John Duke's house, or did you start at a point in John Duke's property?

A. Do you mean the description there?

Q. Yes.

A. I should have stated that the description in that complaint is only a portion of the land as described in that deed. I have compiled two descriptions, one of the portion within Hotel Street, and one of the balance of the lot.

Q. Will you point out on this map John Duke's property?

A. Right here, enclosed by these red lines, and marked L. C. A. 5527 to John Duke.

Q. And on what portion of that entire tract of

(Testimony of Robert D. King.)

property was John Duke's house located?

A. Well as I say, there—

Q. Do you know?

A. I never saw the house there.

Q. Is there any map which shows the location of John Duke's house?

A. Yes,—this map shows the location of a house that I take to be John Duke's.

Q. Where does it show the house to be located?
[86]

A. In one portion of the John Duke award.

Q. In what portion? A. Southeast corner.

Q. Will you indicate on that map the location of John Duke's house?

A. It is here (pointing).

Q. As shown on the map? A. Here shown.

Q. Do you understand the distinction between a house and a lot that size—do you pretend to say the whole?

A. No, it wasn't the size—that is, it is not covering the whole kuleana. That is a surveyor's mark for house,—black lines with these lines running from it.

Q. Then according to that survey it only had three sides? A. This side isn't marked here.

Q. Will you make a mark upon that map which will indicate the location of this house?

A. Take these little lines in pencil.

Q. Now, at what part of that house did you start?

A. Started at the southeast corner.

Q. Why did you start there?

(Testimony of Robert D. King.)

A. That joins on the map the boundary of the Adams kuleana.

Q. That isn't called for by any description here contained in this deed,—the description of the deed is as follows: Commencing at John Duke's house along the Street SE. by E. $1\frac{1}{2}$ 46.6 feet,—can you point out the place of commencement under that description?

A. Yes. That is the point I adopted (pointing). A man cannot do any more than he knows, so I got the initial point of beginning between Adams and John Duke which intersects the southeast corner of that house approximately,—the only one you could have used. [87]

Q. In other words, no accurate statement of a point of beginning is contained in that deed,—it isn't there, is it?

A. Well, I don't know as you could get anybody that can make any more accurate description with a survey by a surveyor's compass.

Q. I will ask you if you can by that description show us where it is located on this map?

A. Well, I would say that I read that description over, and I adopted that from all the different data that I could get hold of, and used that as—that corner as the initial point.

Q. You did that irrespective of anything that was said in the deed itself,—just followed that arbitrarily?

Mr. ANDREWS.—Object to that, the testimony

(Testimony of Robert D. King.)

not being to that effect at all.

(Argument.)

The COURT.—Objection overruled.

Mr. ANDREWS.—Exception.

A. Well, I have explained to you time and time again through these surveys here. You can see yourself that it is rather an indefinite description. You cannot take the description and just in this way, without getting some other corroborative information. I used the original award of John Duke and the award of Alexander Adams and our Government survey map, and decided in my own mind that that was very probably the corner of the initial point of that survey. Then I took these compass bearings and reduced them to degrees of the arc and plotted them and allowed for the variance of that deed, which was nine degrees and twenty minutes declination; fitted them up on the bearings and they fitted on our Government survey map by bearings and distances so very closely that there was no doubt in my mind that it was the intention of the man in that deed. I don't think [88] I can explain any further to you.

Q. To our mind the deed conveys the property that is described in the deed, and that is all that it does convey, and I am trying to get away from any proposition of guess work or anything else. Now, in order to properly locate a piece of property, you have to have a point of beginning? A. Yes.

Q. Is there any definite point of beginning stated in that deed? A. Why, John Duke's house.

Q. That is the point of beginning, isn't it?

(Testimony of Robert D. King.)

A. Yes, John Duke's house, along the street.

Q. On which side of John Duke's house?

A. I took it to be on the—

Q. Is there anything in this deed which shows which side of the John Duke house is the point of beginning? A. No.

Q. Is there anything to show that it was any other part of John Duke's house. A. No.

Q. So far as this description is concerned, it might have started anywhere within the distances set forth in the deed?

A. The other courses govern, too. This begins at the corner of John Duke's house,—and I took it to be this corner (pointing); then it runs southeast a certain distance; it doesn't run this way (pointing); if it did,—if it commenced on this side (pointing) of John Duke's house, it would have to run southeast that way (pointing); it would not run this way southeast that way (pointing); it would not run this way (pointing).

Q. Supposing it started, we will say, at this corner (pointing) over here, and ran southeast as referred to in this deed, where would it come out? [89]

A. That corner is along the street. You have two points that govern, John Duke's house and the street; then he ran southeast.

Q. Supposing it began here? (pointing).

A. Well, it would go in the same direction, only it would include a portion of John Duke's property, and I don't think that Adams would deed a portion of land that didn't belong to him.

(Testimony of Robert D. King.)

Q. So far as deeding property that didn't belong to him, that is a matter of conclusion? A. Yes.

Q. Then dependent upon what corner of John Duke's house you took, your survey is correct or incorrect? A. Yes.

Mr. PROSSER.—That is all.

Redirect Examination of ROBERT D. KING.

(By Mr. ANDREWS.)

Q. Now, Mr. King, just one question,—as I understand it you took the intersection of John Duke's property with the Alexander Adams property?

A. Yes.

Q. Now, if you measured that by your courses along that description, would they come so that they would not be taking that point and take running along the street and taking up your courses, did that give you a perfect description of the piece of property included in the Alexander Adams award?

A. Yes.

Mr. ANDREWS.—That is all. [90]

Mr. PROSSER.—I move to strike out all the evidence of this witness on the ground that it is indefinite and uncertain and has no bearing on any of the issues in the case, and on the further ground that the description contained in the deed under which the plaintiff's claim is as follows: (Reads description, and argues.)

The COURT.—If this is not sufficient, gentlemen, added to the map and explanation of this surveyor, a Government employee, I don't know how you are go-

ing to get anything in this territory where you can say that you had, so far as it has been before me. I think you are a little too technical on this point.

(Argument.)

The COURT.—Your argument is that this is not sufficient to identify the property in the complaint?

Mr. PROSSER.—Exactly, your Honor.

The COURT.—I admit the force of your argument. In the States, the Western States, they say,—Section 26 of the northwest quarter of township 2, range 16,—and there is no other piece of land in the United States that will answer to that description. Now, that is more definite, more certain, but, Mr. Prosser, we must have some way of getting at the titles here,—you won't have any title to yourself. We have to get at it the best way we can. I admit the force of your argument that you cannot tell whether it is northeast or southwest corner of that house that the land commenced or whether it was the middle, but with the aid of all the other matters, it seems to me it is sufficient to identify it as the property in the complaint. Now, if that is the property also established by the evidence that they have, I don't see how you can get at it any other way. [91]

Mr. PROSSER.—As my associate says,—the evidence of this witness simply goes to this extent,—that assuming for the sake of argument that this point which I have taken is the correct *copint* to take, then my description is correct, otherwise it is not.

The COURT.—You will have to argue it. I admit the weakness of it there.

Mr. STANLEY.—I submit that the evidence should be stricken out, being merely assumption. There is no positive evidence here where that point was. You first of all have to establish the point and then bring in your surveyor to say this point being established, we can get the other lines, but you might bring in anyone, assuming this to be the point—

The COURT.—Mr. Stanley, it must go to the preponderance of the evidence. I must not require that it shall be absolute,—but what does the preponderance of the evidence show, as to whether this was the property or not, and so far, it seems to me that if I was to sustain your objection I do not know what title would stand.

(Argument.)

The COURT.—I am not absolutely certain that I am right, but I think I am, and I will overrule the motion.

Mr. PROSSER.—Exception.

Mr. ANDREWS.—I understand that by the answer an admission is made of the possession by the defendants. They claim possession of the property and claim in their answer, and it is under oath, that they are in possession, and that is an admission sufficient in law not to have to prove that location.

The COURT.—Yes.

Mr. ANDREWS.—We rest, if the Court please, it being understood that we shall file the patent. [92]

Mr. PROSSER.—Plaintiff having rested in this case, we would like about five minutes to consult with my associates.

(Testimony of Mary Kaleialii.)

The COURT.—Yes.

(Recess 5 minutes.)

Mr. PROSSER.—I will ask Mary Kaleialii to take the stand, please.

Testimony of Mary Kaleialii, for Defendants.

MARY KALEIALII, sworn as a witness on behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. PROSSER.)

Q. Mrs. Kaleialii, what was the date of your brother Robert's birth?

A. Second of September.

Q. And did he have any name other than Robert?

A. Napunako.

Q. And in what year was he born?

Mr. ANDREWS.—We certainly object; incompetent, irrelevant and immaterial, unless there is some purpose disclosed.

(Argument.)

The COURT.—I will overrule the objection.

Mr. PROSSER.—Q. In what year was he born in, Robert born in?

A. I don't remember; I think he wife knows; I have forgotten.

Q. Was it 1863?

A. I couldn't tell just exactly, I have forgotten.

Q. Do you know what year you were born in?

A. Yes.

Q. What year?

A. 1859—I was fifty-six years old—

Mr. PROSSER.—I now desire to offer official certificate of the Registrar General of the Territorial Board of Health, showing that Robert Boyd, under his native name of Napunako, was born in Honolulu, September 2, 1863, and that the father was Edwin Boyd and the mother was Peke. [93]

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial, not bearing on this case so far as we can see, there being nothing to show that this is the party mentioned.

The COURT.—Let it go in; give you an exception. (Received, marked Defendant's Exhibit 1.)

Mr. PROSSER.—(To Interpreter.) Mr. Hopkins, I will ask you to read it, read it so the Court can understand.

INTERPRETER.—(Reading:) This is to certify that on page 8 of Vol. 4A of the Records of birth in Honolulu, Oahu, between the dates of 1863–1880, occurred the following record of birth: Schoolhouse at Pauca, District of Honolulu, A. D. 1863; Born; the date of the month, September 2; Name, Napunako; male or female, K. (meaning male); name of father, Edwin Boyd, name of mother, Peke. The above is a true and correct copy made by me this 31st day of March, 1915. (Received and marked Defendant's Exhibit 1.)

Mr. PROSSER.—That is all.

Testimony of George C. Kopa, for Defendant.

GEORGE C. KOPA, sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. PROSSER.)

Q. What is your name?

A. George C. Kopa.

Q. Have you with you Volume 26 of Conveyances?

A. Yes, sir.

Q. Will you turn to page 434?

A. (Witness turns to page.)

Q. What is the conveyance on that page shown?

A. A deed made by Peke A. Stone, daughter of Alexander Adams, Jr., to Maria A. Boyd.

Q. Conveys what property? [94]

A. All her interest in those pieces of land situate on the Island of Oahu which were conveyed to myself and Maria from Alexander Adams, Jr., by deed dated the 15th day of September, 1858, recorded in Book 11, pages 75, 76, 77.

Mr. PROSSER.—I would ask at this time that we be permitted to furnish the Court with a copy of that deed from the record, the same to be marked in evidence as an exhibit on behalf of the defendant.

Mr. ANDREWS.—We have no objection to that part of it; we think it is very wise to get them in that way,—you have certified copies, I take it, of the deeds,—but if the Court please, we object to the deed coming in evidence in order to protect our rights fully on the ground that the deed is incompetent, irrelevant

(Testimony of George C. Kopa.)

and immaterial as far as the issues of this case are concerned, and especially for the reason that it purported to convey to one of the grantees of the deed from Alexander Adams to Peke and Maria, conveying more than she obtained from said deed, to wit, a fee simple title in property in which she only had a life interest.

Mr. PROSSER.—That is the question of law in the whole case, to be decided by your Honor.

(Witness reads deed.)

Mr. PROSSER.—Do you waive the reading of the acknowledgment?

Mr. ANDREWS.—Yes.

The COURT.—The objection will be overruled and an exception noted. You will be permitted to file a certified copy of the deed; mark it exhibit—this will be marked exhibit 2.

Mr. PROSSER.—Q. I will ask you if you have in your possession Volume 96 of Conveyances?

A. Yes. [95]

Q. Will you turn to page 354 thereof and state what conveyance you find there.

A. A deed made by Rebecca Adams Stone to Maria A. Boyd.

Q. What is the date of it? A. October 21, 1885.

Q. What does it convey?

A. Conveying all her interest in those pieces of land which were described in the deed made by Alexander Adams, Jr., to Peke and Maria and recorded in Book 11, on pages 75, 76 and 77.

(Testimony of George C. Kopa.)

Mr. PROSSER.—And you waive the reading of the rest of it?

Mr. ANDREWS.—Yes, on the understanding that a copy of the deed will be presented and filed.

The COURT.—A copy of the deed will be presented as exhibit 3.

Mr. ANDREWS.—We object to it being received in evidence on the grounds before stated.

The COURT.—Objection overruled; exception given.

(Received and marked Defendant's Exhibit 3.)

Mr. PROSSER.—Q. I will ask you if you have Volume 97, and ask you to turn to page 277 thereof.

A. I have.

Q. And what is that conveyance?

A. It is a deed given by Maria A. Boyd, widow, to G. H. Robertson and C. Bolte, trustees.

Q. And what does it convey?

Mr. PROSSER.—I will state to your Honor that it conveys a multitude of properties, and I suggest counsel do the same as they did before, rather than encumber the record.

A. Conveys all and singular the lands, tenements and hereditaments set forth in Schedule A, which are various pieces of land.

Mr. ANDREWS.—I will admit that it includes the land in dispute. [96] We will admit that it includes among others, the land in dispute and consent that a copy of the deed be filed here instead of being read into the record. Then, if the Court please, I object to the deed being offered in evidence on the

same grounds, incompetent, irrelevant and immaterial; and purports to convey from the grantor, greater property than she had in the land in question, to wit, the land in dispute,—that portion of the land in question which is in dispute, a greater estate she conveys or attempts to convey than she had in the land in dispute.

The COURT.—The agreement will be noted, and a copy will be furnished to be marked Defendant's Exhibit 4, and the objection will be overruled and exception given.

Mr. PROSSER.—And you will admit that these various books are produced from the proper custody?

Mr. ANDREWS.—Yes.

Mr. PROSSER.—I now desire to introduce in evidence as an exhibit on behalf of the defendant, original deed from the trustees named in the last conveyance, to wit, Mr. Robertson and Mr. Bolte, to Sullivan and Buckley, dated December 8, 1885, recorded in the office of the Registrar of Conveyances on the 15th day of February, 1886, in Liber 99 at pages 97, etc., dated December 8, 1885, recorded in Liber 99, at page 97, on the 15th day of February, 1886,—the same being a conveyance of the property alleged to have been set forth and described in the complaint.

Mr. ANDREWS.—We object to it on the same grounds as we objected to the other deeds, to wit, incompetent, irrelevant and immaterial as far as the issues of this case are concerned, and purports to convey on the part of the grantees a greater estate

in the land in question than they were entitled to or than they possessed. [97]

(Argument.)

The COURT.—You are claiming from a party that gets the reversion; the objection will be overruled, and it will be admitted.

(Received and marked Defendant's Exhibit 6.)

Mr. ANDREWS.—We except.

Mr. PROSSER.—In order to avoid having to bring in the entire probate record of the Sullivan Estate, I will ask counsel for the defendants to admit that the defendants other than Buckley named herein, have succeeded to such title as Sullivan obtained under the last deed which has just been introduced in evidence, subject to your objection.

Mr. ANDREWS.—We object to the introduction. We admit that the defendants named in our complaint other than John Buckley in his own name, are the heirs at law of John J. Sullivan and are the devisees of John J. Sullivan and trustees under his will and succeed to whatever title he obtained in this property, if any, under the deed of Robertson and Bolte to Buckley and Sullivan, which has been marked exhibit 5. Then we object to the probate record being offered which we understand this admission covers, and object to the testimony that will be given under this admission, on the ground that it is incompetent, irrelevant and immaterial, it having been shown that they had no title to the property, to our interest in the property.

(Testimony of George H. Robertson.)

The COURT.—Same ruling; same exception allowed.

Mr. PROSSER.—That is all.

Mr. ANDREWS.—That is all; no questions.

Mr. PROSSER.—Call Mr. George Robertson. In regard to this witness he is very deaf, and I will have to ask the courtesy of counsel to allow him to go ahead and tell his story practically as he can do it, because it is with the very [98] greatest difficulty that I can talk with him at all.

Mr. ANDREWS.—We will do it to a certain extent. We cannot allow Mr. Robertson to put in anything he sees fit.

Testimony of George H. Robertson, for Defendant.

GEORGE H. ROBERTSON, sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. PROSSER.)

Q. What is your name?

A. George H. Robertson.

Q. And where do you live?

A. At Honolulu, Punahou District, Bingham and Artesian Street.

Q. Honolulu—are you the George H. Robertson referred to in that certain deed of trust from Maria Boyd to yourself and Mr. Bolte? A. I am.

Q. What relation if any, are you to Mrs. Boyd?

A. Son-in-law.

Q. And what relation are you to that lady who has just testified? A. My wife's sister.

(Testimony of George H. Robertson.)

Q. Now, will you state to the Court under what circumstances that deed of trust was executed?

A. Maria Boyd called on me and Mr. Bolte—

Mr. ANDREWS.—We certainly object to any conversation as to circumstances under which the deed was executed as incompetent, irrelevant and immaterial; we cannot see how that has anything to do with this case.

(Argument.)

The COURT.—I do not know myself what it is, and so you can have the benefit of your objection. I will overrule it now and I may entertain it as soon as I hear the witness through.

Mr. ANDREWS.—We except as it is now. [99]

Mr. PROSSER.—Proceed Mr. Robertson.

A. I said Mary Boyd's property was very much involved. She called upon me and Bolte to act as her trustees. We agreed to do so. We went to the attorney for the mortgagee and asked him how the matter stood. They were to foreclose a mortgage upon the Maunawili Ranch,—the mortgage was eight thousand dollars. We asked the attorney to hold up these proceedings and give us a chance. He gave us twenty-four hours to pay the interest, one thousand dollars or very near it; gave us two months in which to pay \$2500 on account of the mortgage. There was no property in her name that we could realize upon on any such short notice excepting this property that is now in litigation and a piece of property up in Pauoa. We had to raise, immediately, money to pay that interest and hold up the foreclosure. She mort-

(Testimony of George H. Robertson.)

gaged that property before she gave us the trust deed because it took time to make up the trust deed and it could not be done in twenty-four hours notice. We held up that—we held up the foreclosure proceedings. That property at Maunawili was the most valuable asset they had,—it was their house of refuge. They had nothing else to live on. We did the best we could. We paid up \$2,500 on account of that mortgage, and in three months and a half from the day she appointed us as her trustees, she revoked the trust deed, and we deeded her back her property. She turned the property over then to her son James and Antone Rosa, a practicing attorney here at that time. They ran the thing a little while and she took her property back from them and put it in the hands of Robert Boyd, her brother. He ran the property for three or four years and things became [100] very much worse involved. The result was that he surrendered his trusteeship and Charles T. Gulick was appointed in his stead,—Charles T. Gulick was appointed by Maria Boyd and all of the seven children as their trustee. Ned Boyd left in his own name several pieces of property which belonged to the children, Maria Boyd having her life interest in it. All that property is gone, every foot of it. I say, I beg to submit that had we known at that time that there was any reversion in this deed of Alexander Adams, that every one of the children would have signed that deed without a moment's hesitation. They would have done it to have saved Maunawili,—there was their house

(Testimony of George H. Robertson.)

of refuge. Everything they needed was there—they had some rice lands that were rented,—there was everything there to support their family. Had Bolte and I been left alone, we would have pulled that property out. It was sold individually, and each one of the seven children participated in the proceeds from Maunawili Ranch, every one of them.

Mr. ANDREWS.—If the Court pleases, owing to the statement of Mr. Prosser, I didn't make objections from time to time. Now I move to strike it out, absolutely immaterial and hearsay, and being a statement of conclusions. A great deal of it, for instance, as to what happened to different men and what trustees were appointed by Mary Boyd and so on,—that is hearsay and not the best evidence.

Mr. PROSSER.—We will consent to that being stricken.

Mr. ANDREWS.—There are conclusions as to what she should have done with her property.

Mr. PROSSER.—We have consented to it being stricken.

The COURT.—By consent it is hereby stricken out.

Mr. PROSSER.—Q. Where is Maunawili? [101]

A. On the Kailua side of the Island, near Waimanalo, not far from Waimanalo plantation.

Q. Over the Pali? A. Yes.

Q. And what did the property over there consist of?

(Testimony of George H. Robertson.)

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial.

A. Rice lands at that time,—

The COURT.—Overruled for the present.

A. There were cattle, pigs, taro, a fishing right and a fine water right. That water right now is leased to the Waimanalo Plantation. William G. Irwin bought the property eventually. He paid, if I recollect, \$14,000 for it. He acquired a number of lands below where this water used to supply, he bought that land and then turned the bulk of the water over to the Waimanalo Planation, where it is used now for irrigating cane.

Mr. ANDREWS.—I move to strike that answer out as incompetent, irrelevant and immaterial; hearsay; calling for conclusions; nothing to do, having no bearing whatsoever on the question of who owns this piece of property.

(Argument.)

Mr. ANDREWS.—We moved that his entire answer be stricken out, and I thought you consented to it.

Mr. PROSSER.—I didn't consent to that part there. I would like to revise that consent. I wish that portion of the answer given by Mr. Robertson wherein he said the circumstances under which he took this trust and the purposes of the trust, to remain in evidence.

Mr. ANDREWS.—We certainly cannot consent to that.

The COURT.—That was consented to. If not, the

(Testimony of George H. Robertson.)

Court will sustain the objection to it anyway.

Mr. PROSSER.—Exception.

Q. Did either you or Mr. Bolte ever obtain any consideration whatever in or about the execution of that trust deed or [102] care of the property.

A. No, sir.

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial; we don't care whether Mr. Bolte or Mr. Robertson got anything as trustee or not.

The COURT.—I think the objection should be sustained.

Mr. PROSSER.—Exception.

Mr. ANDREWS.—I move that the answer be stricken out.

The COURT.—Yes, I understand that.

Mr. PROSSER.—Q. After the transfer of this property by yourself and Mr. Bolte as shown by the exhibits in this case, what, if any, improvements were put upon the property.

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial; no bearing on the issues in this case whatsoever.

(Argument.)

The COURT.—I don't see how it could, Mr. Prosser.

(Argument.)

The COURT.—Possibly no, gentlemen, but there is a higher court than myself that will probably be able to make a more intelligent case, and I want them to have all the evidence before them. I will overrule your objection and allow it to go in.

(Testimony of George H. Robertson.)

Mr. ANDREWS.—Exception. Not in any way affecting the rights of these plaintiffs to bring suit for this property.

Mr. PROSSER.—What improvements, if any, have been put upon this property since the date of the transfer of the property by yourself and Mr. Bolte to Buckley and Sullivan?

The COURT.—No objection to asking it that way?

Mr. ANDREWS.—No objection.

Mr. PROSSER.—Q. What improvements have been put upon the Sullivan and Buckley property?

A. The Oregon Block has been built up there since. [103]

Q. And have you any idea of the value of that block?

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial, calling for hearsay and a conclusion on the part of Mr. Robertson.

Mr. PROSSER.—All right, withdraw the question.

Q. Describe the Oregon Block.

A. Well, it is a two story brick building, as far as I know; a part of the building is on this lot that is in question now, and a part of it is on what is known as the John Duke lot, which is a separate piece, but is included in the deed of . . .

Q. And is the entire lot built upon?

A. I cannot say as to the rear part; I do not know how far back that building goes.

Q. Was there any building on the property at the

(Testimony of George H. Robertson.)

time that it was conveyed by you to Sullivan and Buckley?

A. It was a small wooden cottage on it.

Q. And that was taken down? A. It was.

Q. And replaced by the present brick structure?

A. It was.

Q. Now, did Robert Boyd and your sister-in-law here know of the conveyance of that property by yourself and Mr. Bolte to Sullivan and Buckley at the time of the conveyance?

A. Robert Boyd wasn't here.

Q. What was that, tell us?

Mr. ANDREWS.—We will object to all this on the grounds that it is incompetent, irrelevant and immaterial; not binding on plaintiffs in this case, and calling for hearsay testimony.

(Argument.)

The COURT.—Personally I do not see the effect of it, but I want you to have all there is in your case. The objection will [104] be overruled.

Mr. ANDREWS.—Exception.

Mr. PROSSER.—Did your sister-in-law, Mrs. Kaleialii, and Robert know of that conveyance made by you and Mr. Bolte?

A. To the best of my knowledge and belief Mary must have known of it, and she was here with the family. Robert Boyd was in Italy at the time.

Q. How long after this conveyance was made was it before Robert Boyd came back?

A. Within a year.

(Testimony of George H. Robertson.)

Q. Did you ever talk with him or her relative to this conveyance? A. No.

Q. Do you know whether Robert knew that this property had been conveyed or not?

A. He knew it after he got back here.

Q. How do you know that he knew it after he got back here?

A. Talk; well about that date that I got—I will say that I didn't see the original deed of Alexander Adams to Maria and Peke until about two years and a half ago. That deed was brought to my wife a short time before she died, by her sister, who is also dead; she brought that deed there, and my wife asked me to look at it. As soon as I opened it I said: "Why, this is the original deed from Alexander Adams to Peke and Maria," and I asked Sarah, the other sister, how she came to get that deed. She asked me if I recollected the time that Robert and James had a big row over the property. I said I did,—that is the time that Maria Boyd took the property away from Jimmie and Antone Rosa and put it into Robert Boyd's hands. Then she told me and my wife that Antone Rosa brought that deed to her and told her to secrete it, because there was going to be trouble over that property. [105]

Mr. ANDREWS.—If the Court please, this is all hearsay.

The COURT.—I think so. Any objection to it being stricken?

Mr. PROSSER.—No objection.

(Testimony of George H. Robertson.)

The COURT.—That will go out.

Q. You knew Robert Boyd during his lifetime?

A. Certainly.

Q. How long have you known him?

A. Since he was a boy; I went to school with James in 1868 or '67, and Robert was a little boy running around then, little chap.

Q. And you say that this Mrs. Kaleialii is your sister-in-law. A. Yes.

Q. That is, you are married to her sister?

A. Yes.

Q. Do you know as a matter of family history who her father is?

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial, Mr. Robertson not being a member of the family.

A. Always understood to be Ned Boyd.

(Argument.)

The COURT.—Let that go out.

Mr. PROSSER.—Q. What relation was this lady to your wife?

A. Sister.

Q. An own sister.

A. To the best of my knowledge and belief, she was never anything else. She was always a sister by Ned Boyd,—always admitted and acknowledged that Ned Boyd was her father.

Q. Both of them? A. Yes.

Q. Both Robert and this lady here who is in court, one of the plaintiffs here, have stated to you that Ed Boyd was their father?

(Testimony of George H. Robertson.)

A. Never said so in so many words.

Q. What was the understanding in the family,—in the Boyd family as to the parentage of Robert and Mary? [106]

Mr. ANDREWS.—That we object to.

A. Always Ed Boyd—

The COURT.—You are asking for their understanding—if you want to prove family history, let them prove what was said and by whom, and not swear to a general understanding.

(Argument.)

The COURT.—My ruling, Mr. Prosser, is on the word “understanding,” I have said he could testify to facts, family history; what was told him,—but for him to testify to the conclusion as to what the understanding was, I do not think he can do that.

Mr. PROSSER.—I will re-form my question,—what were you told by the members of the Boyd family in regard to the parentage of Robert and Mary?

Mr. ANDREWS.—We object on the same ground; that it is incompetent, irrelevant and immaterial; having no bearing on the facts in this case; nothing to do with the ownership of the land in question, it being shown to have descended from her mother.

The COURT.—I cannot say,—I want him to have the benefit of any evidence, and I will overrule your objection and give you an exception.

Mr. PROSSER.—Q. Will you answer the question—what statements, if any, were made to you by the members of the Boyd family as to the parentage

(Testimony of George H. Robertson.)
of Robert and Mary?

A. Many years ago Peke Stone was married to Mr. Stone, but it has always been a foregone conclusion in the family that Ned Boyd was the father of the seven children.

Mr. ANDREWS.—The latter portion we move to strike out.

The COURT.—That will go out.

Mr. PROSSER.—Q. You stated that it was a foregone conclusion.

Mr. ANDREWS.—That has gone out.

Mr. PROSSER.—All right. [107]

Q. What were you told by members of the family in regard to their parentage.

A. I was told that Peke was married to Stone and he left Peke, and Peke was the mother of these children, Mary and Robert; it was understood amongst themselves, it was never questioned.

Q. Who was the father?

A. Ed Boyd was the father.

Mr. ANDREWS.—We move to strike out the understanding, if the Court please.

The COURT.—Yes, that is stricken.

Mr. PROSSER.—Q. By what name were Robert and Mary always known? A. Boyd.

Q. Were they ever referred to as Stone?

A. Never heard it.

Mr. ANDREWS.—We object, your Honor understands on this examination we have no opportunity of objecting before the question is answered. We move that the answers be stricken out; the questions

(Testimony of George H. Robertson.)

are objected to on the ground that they are incompetent, irrelevant and immaterial.

The COURT.—The objection is made in time under the ruling of the Court, but the Court overrules the objection and gives the plaintiff an exception.

Mr. PROSSER.—Q. During this period of time about which you are stating, who was Peke living with?

A. To the best of my knowledge and belief, from hearsay, she and Mary were living with Ed Boyd.

Mr. ANDREWS.—We ask that that be stricken out.

Mr. PROSSER.—No objection.

The COURT.—That will be stricken out.

Mr. PROSSER.—That is all. [108]

Cross-examination of GEO. H. ROBERTSON.

(By Mr. ANDREWS.)

Q. Mr. Robertson, you say you knew the John Duke property?

A. It is known by that name,—on Hotel Street adjoining this Adams lot.

Q. And did you know it when Mr. Duke had it?

A. I do not recollect it, that Duke had it, the man Duke, but I knew it by another name which I have forgotten,—it came in later.

Q. Now, then, when you were there, when you knew the property before it was bought by Mr. Adams, or belonged to his estate, was there a house on the Duke property?

Mr. PROSSER.—Object, improper cross-examination.

(Argument.)

(Testimony of George H. Robertson.)

Mr. ANDREWS.—I withdraw the question, then.

Q. You spoke of a cottage being on this property, —was it on the Adams property or on the Duke property? A. On the Adams property.

Q. Was there anything on the Duke property that you knew of?

Mr. PROSSER.—Object, not proper cross-examination.

Mr. ANDREWS.—I will withdraw the question.

Q. Now, then, this Duke property immediately adjoined the Adams property? A. Yes.

Q. And it fronts on what is now Hotel Street?

A. Yes.

Q. Running from the Adams Lane down toward Union Street?

A. It was on the Union Street side of the Adams property.

Q. The Duke property,—but the Adams property was next to a lane that is now known as Adams Lane?

A. Alexander Adams had a lot of property besides this little [109] lot. There was a large property between this lot and Adams Lane, which is known as Adams Lane at this time.

Q. That was land that belonged to the Adams estate—the property that you and Mr. Bolte sold, that was the same property which had been given to Peke and Maria, that is correct? A. Yes.

Q. And that John Duke's property was in a line along a portion of the Adams property? A. Yes.

Mr. ANDREWS.—That is all.

Mr. PROSSER.—That is all.

Testimony of C. K. Hopkins, for Defendant.

C. K. HOPKINS, sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. PROSSER.)

Q. Mr. Hopkins, did you know Robert Boyd during his lifetime? A. Yes.

Q. And you knew his sister Mary who is here in court? A. Yes.

Q. And how long have you known both of those parties?

A. Long time ago, before '70 anyway.

Q. Were you in the habit of visiting at their home?

A. Well, yes.

Q. Did you ever hear discussed by the members of the family who the parents of Robert and Mary were? A. No.

Mr. ANDREWS.—Object to it as irrelevant.

The COURT.—He said no.

Mr. ANDREWS.—I beg your pardon,—withdraw the objection. [110]

Mr. PROSSER.—Q. Did you ever know Mr. Stone? A. No.

Q. Did you ever hear of him?

A. I have heard of him.

Q. Do you know when he left the country, if he did leave? A. No, I do not.

Mr. PROSSER.—That is all, I guess.

Mr. ANDREWS.—That is all.

Testimony of C. Bolte, for Defendant.

C. BOLTE, sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. PROSSER.)

Q. Mr. Bolte, you are one of the trustees named in that deed of trust from Maria Boyd to yourself?

A. Yes.

Q. And one of the parties named as trustees who conveyed that property by deed to Sullivan and Buckley? A. Yes.

Q. What, if any, improvements were upon that property at the time you took title to it?

A. There was a cottage—

Mr. ANDREWS.—Same objection as to the question asked Mr. Robertson; incompetent, irrelevant and immaterial; not binding in any way upon the plaintiffs to this action.

The COURT.—Same ruling; exception allowed.

A. There was a cottage on the place adjoining, where now the Steiner place is, the four story brick building, I remember there was a stable.

Mr. PROSSER.—Q. What improvements, if any, have been placed upon this property since?

A. A two story brick building. [111]

Mr. ANDREWS.—Same objection.

The COURT.—Same ruling; same exception.

A. Two story brick building and stores in it; rooms to let in the upper floor.

Q. And at the time that this conveyance was made

(Testimony of C. Bolte.)

by yourself and Mr. Robertson, did Maria and Robert know of the conveyance?

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial; calling for hearsay and conclusion on the part of the witness.

The COURT.—I think this is a man who can understand your questions, and I think you should change your interrogatory—what knowledge, if any, they had, that he knows,—and then I will let it be answered, and the other party will be given an exception, and I will pass upon the weight of it.

Mr. PROSSER.—I will withdraw the previous question and accept the suggestion of the Court.

Q. What knowledge, if any, did Robert and Mary have of the conveyance by you to Sullivan and Buckley?

Mr. ANDREWS.—Same objection.

The COURT.—Same ruling; same exception.

A. I don't know what knowledge they had at the time that we made the deed. This was in along 1886; I don't know what knowledge they had at that time. Robert was not here; he was in Italy, but he came back very soon after. I had not spoken with them at that time. Years after, it was a family matter, from their brothers and sisters, and from their mothers.

Mr. ANDREWS.—Certainly object to that.

Mr. PROSSER.—Q. How do you know they knew from their mothers and sisters?

The COURT.—If that is answered, it will go out. I think, Mr. [112] Prosser, that it suffices that

(Testimony of C. Bolte.)

they knew it from—that it was a family matter, that they knew it from the mothers,—must have known it, that is, about it. (Argument.) I will allow it to be answered, but if it is shown to be hearsay, it will go out.

A. I talked with the mothers and talked with, for instance, Mr. Robertson's wife; I also talked with James.

Mr. ANDREWS.—Now, we move to strike it out.

The COURT.—It shows that it is hearsay; it will go out.

Mr. PROSSER.—That is all.

Mr. ANDREWS.—That is all.

Testimony of John Buckley, for Defendant.

JOHN BUCKLEY, sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. OLSON.)

Q. Your name, please? A. John Buckley.

Q. Mr. Buckley, are you the John Buckley who was one of the grantees in the deed from C. Bolte and Mr. Robertson as trustees of the property which is involved in this suit? A. Yes.

Q. When did Mr. Sullivan die,—approximately, not necessarily the day?

A. In 1911, about the middle of October, 15th, I think, if I be right.

Q. And did you and Mr. Sullivan continue as together interested in that property up to that time?

A. Yes, sir.

(Testimony of John Buckley.)

Q. I will ask you whether or not at any time, any other person than yourselves and your agents were in possession of that [113] property at any time from the time that you got this deed from the trustees up to the time that Mr. Sullivan died?

Mr. ANDREWS.—Object, incompetent, irrelevant and immaterial; the admission having been made that they are in possession as far as that goes, and for any other purpose, it is not binding on the plaintiff, nor has it any relevancy so far as the land is concerned.

(Argument.)

The COURT.—The objection will be overruled, and exception given.

Mr. OLSON.—Q. Has anybody else except you and Mr. Sullivan and your agents been in possession of that property?

A. No, sir; there has never been anybody in possession; we paid all taxes due on the property; collected the rents from the tenants until the present day.

Q. This deed was in 1885? A. 1885, yes sir.

Q. Now, then, when you first obtained this deed from Bolte and Robertson, how did you make use of the property? A. We ran it as a livery stable.

Q. And how long did that continue?

Mr. ANDREWS.—Same objection to all this line of testimony and exception.

Mr. OLSON.—That is consented to.

Q. About how long?

A. I never put down the date; I think about ten

(Testimony of John Buckley.)

or eleven years, along in that neighborhood; I couldn't tell.

Q. Then what did you do with the property?

A. We leased it out and there was a building put up.

Q. Who built the building A. Well—

Q. Did your tenants A. Yes.

Q. And to whom did they pay their rent? [114]

A. They paid the lease; we collected from them every month.

Q. Paid it to you? Yes.

Q. You and Mr. Sullivan?

A. Me and Mr. Sullivan.

Q. And since Mr. Sullivan's death, to the trustees of the estate and yourself?

A. Yes, we have collected the rents since Mr. Sullivan died.

Q. Now, what kind of a building was put up upon these premises by these tenants that you speak of?

A. Two story brick.

Mr. ANDREWS.—Same objection; same exception.

Mr. OLSON.—Q. And when was that building erected, what year?

A. I think it was,—I could not tell very exact, I never set it down, but I think, if I remember right, 1901 or 1902, along in that neighborhood.

Q. The building was erected? A. Yes.

Q. This building is still there? A. Yes.

Q. Since that time, I will ask you whether or not you and your agents have made use of the entire

(Testimony of John Buckley.)

portion of the property?

A. We made use of all the property and paid all the taxes on all the property.

Q. And have been in sole and exclusive possession.

A. Up to the present day.

Q. You have? A. Yes, sir.

Mr. OLSON.—No further questions.

Cross-examination of JOHN BUCKLEY.

(By Mr. ANDREWS.)

Q. Mr. Buckley, this building that you speak of that your tenants built, that doesn't only include the Adams property that you bought, does it? [115]

A. It includes the property which we bought from Mr. Bolte and Mr. Robertson. We put up the building on it.

Q. Then do you know how much of that property that building is on, the property known as the Adams property, which you bought?

A. No, sir, we always believed it belongs to us now, and for thirty years and over, and we paid all taxes and all assessments against the property—

Q. I am not asking that, Mr. Buckley, what I want to know is do you know what portion of that lot that you bought from Bolte and Robertson was Adams estate and what portion was some other property? A. Ask that again.

Q. I wanted to know if you know how much of this portion that you bought from Bolte and Robertson was Adams property and how much belonged to this man Duke or other people you bought from?

(Testimony of John Buckley.)

A. I don't know; when we bought it, we bought the whole property.

Mr. PROSSER.—That is all.

Mr. ANDREWS.—That is all.

Mr. PROSSER.—That closes our case, if the Court please.

Mr. ANDREWS.—We rest, too. Will your Honor set a time for argument?

The COURT.—I want to say that this would be the merest guesswork on my part if I had to determine it now. I do not know what my decision would be. I wish you would make out an abstract on each side, or deraignment of title, as you claim it, on each side, and place it before me; and do you wish to argue the case orally?

Mr. OLSON.—I should say that we will be able, in our oral argument, to present to you what we think clearly shows [116] that this deed, a copy of which is attached to the complaint and which is claimed merely to give a life estate to the grantees—

The COURT.—I am not satisfied with your oral argument; I want this deraignment of title first, and then we will set the time for the oral argument.

Mr. OLSON.—We think there should be oral argument, because we think that we can make it clear just what the points in the case are.

The COURT.—The case is submitted; make out that deraignment of title and put in your remarks as you go along.

(Argument.)

(Testimony of John Buckley.)

The COURT.—You will each have five days within which to file your deraignment of title. The case is submitted. [117]

I hereby certify that the foregoing is a full, true and correct transcript of my shorthand notes taken in the trial of the above-entitled cause.

ELLEN K. DWIGHT,

Official Shorthand Reporter, First Circuit Court.

Honolulu, Hawaii, March 2, 1916.

[Endorsed]: No. 913. Rec'd and Filed in the Supreme Court, March 2, 1916, at 8:50 o'clock A. M. Robert Parker, Jr., Assistant Clerk. [118]

In the Supreme Court of the Territory of Hawaii.

January Term, 1916.

(STAMPED \$2.00)

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Paintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HEN-
RIETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD

CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

**Petition for Writ of Error Returnable to Supreme
Court, Territory of Hawaii.**

ACTION TO QUIET TITLE.

To the Honorable the Chief Justice and Associate
Justices of the Supreme Court of the Territory
of Hawaii:

The petition of Mary Kaleialii, Rebecca Lehia Miles, and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, the plaintiffs in error above named, respectfully shows unto this Honorable Court as follows, to wit:

That heretofore and on or about the 27th day of July, 1914, the plaintiffs in error brought their action against Henrietta Sullivan, John Buckley and Henry Holmes, Trustees under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke and Robert Kirkwood Clarke, a minor, Juanita Ellen Clarke, a minor, and Thomas Walters Clarke, a minor, defendants in error in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, to quiet the title to certain land situated in the City and County of Honolulu, Territory of Hawaii; [119]

That thereafter, and on, to wit, the 31st day of March, 1915, and on the 12th day of January, 1916, said cause came on regularly and duly for trial in said Circuit Court before the Honorable T. B.

Stuart, Third Judge of the Circuit Court of the First Judicial Circuit, sitting without a jury;

That after hearing the evidence adduced by the parties hereto, said court granted judgment for the defendants in error, together with the costs of the action;

That six months have not elapsed since said judgment was rendered, entered and recorded and that said judgment is unpaid and has not been satisfied, either in whole or in part;

That plaintiffs in error feel aggrieved by the said judgment and say that the proceedings prior to judgment and during the trial and at the trial and by the judgment of the court errors of law were committed by the said Circuit Court to the prejudice of the plaintiffs in error, an assignment whereof is herewith presented and filed, and they ask and pray that the proceedings in said cause, as shown by the record, pleadings, minutes of the clerk, exhibits and the evidence recorded by the official stenographer of the said court, be inquired into and reviewed by this Honorable Court in connection with this petition.

WHEREFORE, your petitioners pray that a writ of error may issue out of this court addressed to the clerk of the said Circuit Court of the First Judicial Circuit, Territory of Hawaii, commanding him, the said clerk, to send up to this Honorable Court all and singular the record in said described and mentioned action at law to the end that the errors existing in the record may be corrected, and petitioners further pray that said errors may be by this Honorable Court corrected, the said verdict set aside, the judgment

reversed and judgment given to the plaintiffs herein and full and complete justice may be done in the premises.

MARY KALEIALII,
REBECCA LEHIA MILES, and
ANNIE K. BOYD,
ROBERT N. BOYD and
VICTOR K. BOYD,

By Their Guardian *ad Litem*,
JOSEPHINE BOYD,
By LORRIN ANDREWS,
Their Attorney.

Dated, Honolulu, T. H., January 22, 1916. [120]

Territory of Hawaii,
City and County of Honolulu,—ss.

MARY KALEIALII, one of the plaintiffs in error above named, for herself and on behalf of the other plaintiffs in error herein, being first duly sworn, deposes and says: That she is one of the plaintiffs in error named above; that she has read the foregoing petition and knows the contents thereof and that the same is true to the best of her knowledge and belief.

MARY KALEIALII.

Subscribed and sworn to before me this 22d day of January, 1916.

[Seal]

JAS. K. JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii. [121]

In the Supreme Court of the Territory of Hawaii.

January Term, 1916.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Paintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HEN-
RIETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,
Defendants in Error.

**Assignments of Error on Writ of Error Returnable
to Supreme Court, Territory of Hawaii.**

ACTION TO QUIET TITLE.

Now come the plaintiffs in error, Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, by their counsel, Lorrin Andrews, and assign errors committed by the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, at the trial of the above-entitled cause in March, 1915, to the prejudice of the plaintiffs in error, during the progress of the case and in the de-

termination of the same, to which plaintiffs duly excepted, as follows, to wit:

I.

The said Court erred in construing the deed of Alexander Adams, Jr., dated September 15, 1858, offered in evidence as exhibit "A" in said case, as devising to Peke and Maria, his daughters, an estate in fee, giving to each an undivided one-half ($\frac{1}{2}$) of the land set forth in said deed. Said construction so given by said Circuit Court was and is contrary to law, contrary to the evidence in the case and contrary to the intent of said grantor as gathered from and shown by the deed [122] in its entirety and which construction thereof, by said Circuit Court, was and is prejudicial to the rights of the plaintiffs in error, and erroneous.

II.

The said Circuit Court erred in deciding in favor of the defendants in error and in rendering and entering judgment in favor of the defendants in error and against the plaintiffs in error, to which the plaintiffs in error duly excepted.

And for and on account of said errors assigned above, the plaintiffs in error pray that all the proceedings in said action be, by this Honorable Court, reversed; and that said judgment and decision of the Circuit Court be set aside, and such orders and judgment be entered herein as to this Honorable Court

may seem meet and proper.

MARY KALEIALII,
REBECCA LEHIA MILES, and
ANNIE K. BOYD,
ROBERT N. BOYD and
VICTOR K. BOYD,

By Their Guardian *ad Litem*,

JOSEPHINE BOYD,

Plaintiffs in Error,

By LORRIN ANDREWS,

Their Attorney. [123]

In the Supreme Court of the Territory of Hawaii.

January Term, 1916.

(STAMPED \$2.00)

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Paintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HEN-
RIETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

Writ of Error, Returnable to Supreme Court, Territory of Hawaii.

The Territory of Hawaii, to Henry Smith, Esquire,
Clerk of the Circuit Court, First Judicial Circuit:

Whereas, in an action lately pending before the Circuit Court of the First Circuit, in which the said Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, were plaintiffs, and the said Henrietta Sullivan, John Buckley and Henry Holmes, Trustees under the Will of John Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke and Robert Kirkwood Clarke, a minor, Juanita Ellen Clarke, a minor, and Thomas Walters Clarke, a minor were defendants, error is alleged to have occurred as appears by the assignment of errors on file in this court you are commanded forthwith to send up to this court the record and the exhibits filed in said [124] proceedings.

Witness, the Hon. A. G. M. ROBERTSON, Chief Justice of the Supreme Court, at Honolulu, Territory

J. A. T.,
Clerk.

February

of Hawaii, this 2d day of ~~January~~, 1916.

By the Court:

[Seal]

J. A. THOMPSON,
Clerk Supreme Court.

Received the foregoing writ of error on this 2d day of February, 1916, at 3:50 P. M.

HENRY SMITH,
Clerk Circuit Court, First Circuit.

In obedience to the within writ to me directed, I herewith send up the record and all the exhibits filed in said above-mentioned cause.

Dated, March 2, 1916.

HENRY SMITH,
Clerk Circuit Court, First Circuit.

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii, Rebecca Lehia Miles et al., Plaintiffs in Error, vs. Henrietta Sullivan et al., Defendants in Error. Writ of Error. Filed and Issued February 2, 1916, at 3:49 P. M. J. A. Thompson, Clerk. Received and filed in the Supreme Court March 2, 1916, at 8:50 o'clock A. M. Robert Parker, Jr., Assistant Clerk. Lorrin Andrews, Honolulu, T. H., Attorney for Plaintiffs in Error. [125]

In the Supreme Court of the Territory of Hawaii.

October Term, 1915.

No. 913.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HEN-
RIETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN

CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor.

Opinion of Supreme Court, Territory of Hawaii.

Hon. T. B. STUART, Judge.

Submitted March 9, 1916.

Decided April 20, 1916.

WATSON AND QUARLES, JJ., and Circuit Judge
ASHFORD in Place of ROBERTSON, C. J.,
Disqualified.

Appeal and Error—Writ of Error.—Judgment af-
firmed where the same is in conformity with the
opinion of this court heretofore rendered in the
same case upon reserved questions involving the
same issues. [126]

PER CURIAM.—This is a writ of error to review
the judgment of the Circuit Court in defendants'
favor in an action at law to quiet title to certain
real estate situate in the city and county of Honolulu.
The case was tried in the court below, jury waived.
The decision and judgment of the lower court are
in conformity with the views expressed by this court
in its opinion (ante, p. 38) when the case was before
us on reserved questions involving identically the
same issues. Finding no error on the record the
judgment is affirmed with costs to the defendants in
error.

LORRIN ANDREWS, for Plaintiffs in Error.

FREAR, PROSSER, ANDERSON & MARX and
HOLMES & OLSON, for Defendants in Error.

By the Court:

J. A. THOMPSON,
Clerk.

[Endorsed]: No. 913. Supreme Court, Territory of Hawaii. October Term, 1915. Mary Kaleialii, Rebecca Lehia Miles, and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by Their Guardian *ad Litem*, Josephine Boyd, vs. Henrietta Sullivan, John Buckley and Henry Holmes, Trustees Under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke, and Robert Kirkwood Clarke, a Minor, Juanita Ellen Clarke, a Minor, and Thomas Walters Clarke, a Minor. Decision. Filed April 20, 1916, at 3:52 P. M. J. A. Thompson, Clerk. [127]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Paintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HEN-
RIETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN

CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

Judgment, Supreme Court, Territory of Hawaii.

ACTION TO QUIET TITLE.

This cause coming on to be heard at the October, 1915, Term of the Supreme Court on writ of error to the Circuit Court of the First Judicial Circuit, jury waived, Lorrin Andrews appearing for plaintiffs in error, and Messrs. Frear, Prosser, Anderson & Marx and Messrs. Holmes & Olson appearing for defendants in error, was duly submitted, and the Supreme Court having on April 20, 1916, filed a written opinion holding that the assignments of error should not be sustained and that the judgment of the Circuit Court should be affirmed.

It is hereby ordered and adjudged that the judgment of the Circuit Court herein be and is hereby affirmed with costs.

By the Supreme Court:

[Seal]

J. A. THOMPSON,

Clerk.

J. A. T.
Clerk.
J. K. J.

Entered this 9th day of May, 1916.

as of April 20th, 1916.

Approved:

E. M. WATSON,

Associate Justice, Supreme Court.

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii et al.,

Plaintiffs in Error, vs. Henrietta Sullivan, Defendants in Error. Judgment. Filed May 9, 1916, at 4:28 P. M. J. A. Thompson, Clerk. Lorrin Andrews, Honolulu, T. H., Attorney for Plaintiffs in Error. [128]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Paintiffs in Error,
vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HEN-
RIETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,
Defendants in Error.

**Petition for Writ of Error and Supersedeas Return-
able to U. S. Circuit Court of Appeals.**

ACTION TO QUIET TITLE.

The above-named plaintiffs in error, Mary Kalei-
alii, Rebecca Leahia Miles and Annie K. Boyd, and
Robert N. Boyd, and Victor K. Boyd, by their
guardian *ad litem*, Josephine Boyd, deeming them-
selves aggrieved by the judgment of the Honorable,

the Supreme Court of the Territory of Hawaii entered in a cause entitled "Mary Kaleialii et al., Plaintiffs in Error, vs. Henrietta Sullivan, John Buckley and Henry Holmes, Trustees Under the Will of John J. Sullivan et al., Defendants in Error," on or about the 9th day of May, 1916, come now by Lorrin Andrews, their attorney, and hereby humbly petition said Supreme Court of the Territory of Hawaii for an order allowing said plaintiffs in error to prosecute a writ of error and have the same allowed and issued from the United States Circuit Court of Appeals for the Ninth Circuit to said Supreme Court of the Territory of Hawaii under and according to the laws of the United States in that behalf made and provided, and that a transcript of [129] the record, proceedings and documentary exhibits upon which said judgment was made duly authenticated, may be sent to said United States Circuit Court of

J. A. T.
Clerk,
May 29,
1916.

Appeals for the Ninth Circuit; and also that an order may be made by this Honorable Court fixing the amount of the bond which the said plaintiffs shall give and furnish upon said writ of error, and that upon the filing of such bond, all proceedings in said cause in the Supreme Court of the Territory of Hawaii and in the Circuit Court of the First Judicial Circuit be suspended and stayed until the determination of such writ of error by the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit.

That six months have not elapsed since said judgment was rendered, entered and recorded and that said judgment is unpaid and has not been satisfied,

either in whole or in part.

And in this behalf, your petitioners show, by the affidavit of Mary Kaleialii, that the said judgment was rendered in an action to quiet title at law and that the amount involved, exclusive of costs, exceeds the value of \$5,000, and amounts to to wit, the sum of \$15,000.

WHEREFORE, petitioners pray that a writ of error may issue out of this Court to the end that the errors existing in the record may be corrected and the judgment reversed and judgment given to the plaintiffs herein and full and complete justice may be done in the premises.

Dated, Honolulu, T. H., May 9, 1916.

LORRIN ANDREWS,
Attorney for Petitioners. [130]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD

CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

**Assignments of Error on Return to Writ of Error
Returnable to U. S. Circuit Court of Appeals.**

ACTION TO QUIET TITLE.

Now comes the plaintiffs in error, Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, by their counsel, Lorrin Andrews, and make the following assignments of error, which they aver and submit were committed by the Supreme Court of the Territory of Hawaii in and by its opinion, decision and judgment in this cause, that is to say:

I.

The court erred in sustaining the Circuit Order of the First Judicial Circuit in construing the deed of Alexander Adams, Jr., dated September 15, 1858, offered in evidence as exhibit "A" in said case, as devising to Peke and Maria, his daughters, an estate in fee, giving to each an undivided one-half ($\frac{1}{2}$) of the land set forth in said deed. Said construction so given by said Circuit Court was and is contrary to law, contrary to the evidence in the case and contrary to the intent of said grantor, as [131] gathered from and shown by the deed in its entirety, and which construction thereof, by said Circuit Court, was and is prejudicial to the rights of the plaintiffs in error, and erroneous.

II.

The court erred in sustaining the Circuit Court of the First Judicial Circuit in deciding in favor of the defendants in error and in rendering and entering judgment in favor of the defendants in error and against the plaintiffs in error, to which the plaintiffs in error duly excepted.

And for and on account of said errors assigned above, the plaintiffs in error pray that the judgment of said Supreme Court of the Territory of Hawaii so ordered, rendered and entered in this case may be reversed.

Dated, Honolulu, T. H., May. 9, 1916.

MARY KALEIALII,

REBECCA LEHIA MILES and

ANNIE K. BOYD and

ROBERT N. BOYD, and

VICTOR K. BOYD,

By Their Guardian *ad Litem*,

JOSEPHINE BOYD,

Plaintiffs in Error.

By LORRIN ANDREWS,

Their Attorney. [132]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

Affidavit as to Amount Involved.

ACTION TO QUIET TITLE.

Territory of Hawaii,

City and County of Honolulu,—ss.

Mary Kaleialii, of the City and County of Honolulu, Territory of Hawaii, being first duly sworn, deposes and says: That she is one of the plaintiffs in error in the above-entitled cause, and is well acquainted with the matters in controversy in said cause and with the interests of plaintiffs in error herein; that the value of the estate sought to be disposed of in said action to quiet title and the share

claimed by plaintiffs in error therein which is in dispute in this case is upwards of Fifteen Thousand Dollars (\$15,000.00); that the value of the interests in said cause involved and dependent upon the outcome of said controversy between the plaintiffs in error and defendants in error, exclusive of costs, far exceeds the sum or value of Five Thousand Dollars (\$5,000.00) that under the decision of the Supreme Court of the Territory of Hawaii, the plaintiffs in error are totally deprived of their interests in said estate and that the value of said estate to deponent, if the decision of the Supreme Court of the Territory of Hawaii is reversed and set aside, will amount to Seven Thousand Five Hundred Dollars (\$7,500).

MARY KALEIALII.

Subscribed and sworn to before me, this 25th day of April, A. D. 1916.

[Seal]

JAS. K. JARRETT,

Notary Public, First Judicial Circuit, Territory of Hawaii. [133]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the

Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

**Order Allowing Writ of Error and Supersedeas
Returnable to U. S. Circuit Court of Appeals.**

ACTION TO QUIET TITLE.

Upon reading and filing the foregoing petition for a writ of error together with an assignment of errors presented therewith, alleged to have occurred in the judgment of this Court and in the proceedings in the trial of said cause prior thereto,

IT IS ORDERED that a writ of error be and the same is hereby allowed to the said Mary Kaleialii, Rebecca Lehia Miles, and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, to have reviewed by the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered in the above-entitled cause and the proceedings in the trial of said cause prior thereto, and that the amount of bond on said writ of error be, and the same is hereby fixed in the sum of FIVE HUNDRED DOLLARS (\$500.00); and that upon the filing by said above-named plaintiffs in error of an approved bond in said amount, all further proceedings in said cause and in the said Supreme Court of the Territory of Hawaii shall be stayed and suspended until the determina-

tion of such said writ of [134] error by the said United States Circuit Court of Appeals for the Ninth Circuit.

[Seal]

E. M. WATSON.

Asso. Justice Supreme Court for the Territory of Hawaii.

Dated, this 9th day of May, 1916.

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii, et al., Plaintiffs in Error, vs. Henrietta Sullivan, et al., Defendants in Error. Petition for Writ of Error and Supersedeas, Assignments of Error, Affidavit, Order Allowing Writ of Error and Supersedeas. Filed May 9, 1916, at 2:50 P. M. J. A. Thompson, Clerk. Lorrin Andrews, Honolulu, T. H. Attorney for Plaintiffs in Error. [135]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD

CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

**Supersedeas and Cost-bond on Writ of Error
Returnable to U. S. Circuit Court of Appeals.**

ACTION TO QUIET TITLE.

KNOW ALL MEN BY THESE PRESENTS:
That we, Mary Kaleialii, Rebecca Lehia Miles, and
Annie K. Boyd, and Robert N. Boyd, and Victor K.
Boyd, by their guardian *ad litem*, Josephine Boyd,
as principals, and Edward P. Fogarty and Joaquim
G. da Silva, as sureties, all of the City and County of
Honolulu, in the Territory of Hawaii, are held and
firmly bound unto Henrietta Sullivan, John Buckley
and Henry Holmes, Trustees under the Will of John
J. Sullivan, Henrietta Sullivan, John Buckley,
Priscilla Alberta Sullivan Clarke and Robert Kirk-
wood Clarke, a minor and Juanita Ellen Clarke, a
minor, and Thomas Walters Clarke a minor, in
the sum of Five Hundred Dollars (\$500.00), to the
payment whereof, well and truly to be made, we do
hereby firmly bind ourselves and our respective heirs,
executors and administrators.

The condition of this obligation is as follows:

Whereas, in an action at law heretofore pending in
and before the Supreme Court of the Territory of
Hawaii, wherein said bounden principals were plain-
tiffs in error, and said obligees were defendants in
error, the said Supreme Court did, on the 20th
[136] day of April, 1916, order, render and enter a

judgment of said Supreme Court, wherein and
whereby there was and is affirmed a certain

J. G. da
Silva
E. P. Fo-
garty
J. A. T.
Clerk.

17th
judgment theretofore, to wit, on the 9th

January, 1916,

day of ~~November, 1915~~, rendered and en-
tered in and by the Circuit Court for the

First Circuit of said Territory, in a cause wherein
said bounden principals were parties plaintiff, and
said obligees were parties defendant, and which said
judgment was in favor of said defendants; and
whereas said bounden principals have applied for,
and are about to sue out, a writ of error from the
United States Circuit Court of Appeals for the
Ninth Circuit to said Supreme Court of the Terri-
tory of Hawaii to the end that the judgment of the
said Supreme Court, above described, may be re-
viewed by said United States Circuit Court of Ap-
peals for the Ninth Circuit, and have taken, or are
about to take such further and other proceedings as
may be necessary to obtain a review by said United
States Circuit Court of Appeals for the Ninth Cir-
cuit of the judgment last aforesaid;

NOW THEREFORE, if the said bounden prin-
cipals shall prosecute said writ of error to effect, and
shall answer all damages and cost if they fail to make
their plea good, then the above obligation shall be
void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said principals
and the said sureties have hereunto set their hands
and seals at the City and County of Honolulu, Terri-

tory of Hawaii, this 6th day of May, A. D. 1916.

MARY KALEIALII,
REBECCA LEHIA MILES,
ANNIE K. BOYD,
ROBERT N. BOYD and
VICTOR K. BOYD,

By JOSEPHINE BOYD,
Their Guardian *ad Litem*.

E. P. FOGARTY,
JOAQUIM G. da SILVA.

Approved:

[Seal]

E. M. WATSON,
May 8, 1916,

Associate Justice, Supreme Court, Territory of
Hawaii.

Approved:

FREAR, PROSSER, ANDERSON & MARX,

Attys. for Defendants. [137]

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii, et al., Plaintiffs in Error, vs. Henrietta Sullivan, et al., Defendants in Error. Supersedeas and Cost-Bond on Writ of Error. Filed May 9, 1916, at 2:50 P. M. J. A. Thompson, Clerk. Lorrin Andrews, 37 Merchant St., Attorney for Plaintiffs in Error. [138]

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

**Writ of Error to the Supreme Court for the
Territory of Hawaii.**

ACTION TO QUIET TITLE.

The United States of America,—ss.

The President of the United States to the Honorable,
the Justices of the Supreme Court of the Terri-
tory of Hawaii, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said Supreme Court for the Territory of Hawaii,
before you, or some of you, between Mary Kaleialii,
Rebecca Lehia Miles, Annie K. Boyd, and Robert N.
Boyd, and Victor K. Boyd, by their guardian *ad*

litem, Josephine Boyd, Plaintiffs in Error, and Henrietta Sullivan, John Buckley and Henry Holmes, Trustees under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke and Robert Kirkwood Clarke, a minor, Juanita Ellen Clarke, a minor, and Thomas Walters Clarke, a minor, Defendants in Error, a manifest error hath happened to the great damage of the said plaintiffs in error, as by their complaint appears:

We being willing that error, if any hath been, shall be [139] duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within Thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 9th day of May, in the year of our Lord one thou-

sand nine hundred and sixteen.

[Seal]

J. A. THOMPSON,

Clerk of the Supreme Court of the Territory of
Hawaii.

Allowed this 9th day of May, 1916.

E. M. WATSON,

Associate Justice of the Supreme Court of the Terri-
tory of Hawaii. [140]

[Endorsed]: No. 913. In the Supreme Court of
the Territory of Hawaii. Mary Kaleialii et al.,
Plaintiffs in Error, vs. Henrietta Sullivan et al., De-
fendants in Error. Writ of Error to the Supreme
Court for the Territory of Hawaii. Filed May 9,
1916, at 2:50 P. M. J. A. Thompson, Clerk. [141]

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,

Defendants in Error.

**Citation on Writ of Error Returnable to U. S. Circuit
Court of Appeals.**

ACTION TO QUIET TITLE.

THE UNITED STATES OF AMERICA,—ss.

The President of the United States to Henrietta Sullivan, John Buckley and Henry Holmes, Trustees Under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke and Robert Kirkwood Clarke, a Minor, Juanita Ellen Clarke, a Minor, and Thomas Walters Clarke, a Minor, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Territory of Hawaii, wherein Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by their guardian *ad litem*, Josephine Boyd, are plaintiffs in error, and you are defendants in error,—to show cause, if any there be, [142] why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 9th day of May, in the year

of our Lord one thousand nine hundred and sixteen.

E. M. WATSON,

Associate Justice of the Supreme Court of the Territory of Hawaii.

[Seal]

Attest: J. A. THOMPSON,

Clerk of the Supreme Court of the Territory of Hawaii.

Due service of the within citation and receipt of copy is hereby admitted this 11th day of May, A. D. 1916.

FREAR, PROSSER, ANDERSON & MARX,

Attorneys for Defendants in Error. [143]

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii et al., Plaintiffs in Error, vs. Henrietta Sullivan et al., Defendants in Error. Citation. Filed and Issued for Service May 9, 1916, at 2:50 P. M. J. A. Thompson, Clerk. [144]

Returned May 11, 1916, at 11:00 A. M. J. A. Thompson, Clerk.

In the Supreme Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES,
ANNIE K. BOYD, and ROBERT N. BOYD,
and VICTOR K. BOYD, by Their Guardian
ad Litem, JOSEPHINE BOYD,

Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRIETTA

SULLIVAN, JOHN BUCKLEY, PRISCILLA ALBERTA SULLIVAN CLARKE and ROBERT KIRKWOOD CLARKE, a Minor, JUANITA ELLEN CLARKE, a Minor, and THOMAS WALTERS CLARKE, a Minor,

Defendants in Error.

Praeceptum for Transcript of Record.

ACTION TO QUIET TITLE.

To James A. Thompson, Esquire, Clerk of the Supreme Court of the Territory of Hawaii:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit under the Writ of Error heretofore issued by said Court and include in said transcript the following pleadings, proceedings, opinions, judgments and papers on file in said cause, to wit:—

1. Amended bill of complaint and attached thereto as exhibits thereof, the following: Exhibit "A," copy of deed of Alexander Adams, Jr., to Peke and Maria, dated Sept. 15, 1858, recorded in Book 11, p. 75, and Exhibit "B," a translation of said deed of Sept. 15, 1838, marked Exhibit "A."
2. Defendants' answer and plea.
3. Copy clerk's minutes of the Circuit Court.
4. Reservation of questions of law for consideration of the Supreme Court, including Exhibits "A," "B," "C," and "D."

5. Opinion of Supreme Court on reserved question of law entered *entered* November 8, 1915. (Case No. 879.)
6. Notice of decision on reserved question of law of the Supreme Court.
7. Decision of the Circuit Court dated January 12, 1916.
8. Judgment of the Circuit Court entered January 17, 1916. [145]
9. Transcript of evidence, Circuit Court.
10. Petition for writ of error to the Circuit Court of the First Judicial Circuit, Territory of Hawaii.
11. Plaintiffs' assignments of error.
12. Writ of error.
13. Decision of the Supreme Court rendered April 20, 1916.
14. Judgment of the Supreme Court entered May 9, 1916, as of April 20, 1916.
15. Petition for writ of error and supersedeas.
16. Assignments of error.
17. Affidavit as to amount involved.
18. Order allowing writ of error and supersedeas.
19. Supersedeas and cost bond on writ of error.
20. Writ of Error to the Supreme Court for the Territory of Hawaii.
21. Citation and acknowledgment of service thereof.

You will also annexed to and transmit with the record the original writ of error from the United States Circuit Court of Appeals for the Ninth Circuit and Citation with return of service, your re-

turn to the writ of error under seal of the Supreme Court of the Territory of Hawaii, and also your certificate under seal, stating in detail the cost of the record and by whom the same was paid.

Dated, Honolulu, T. H., May 9, 1916.

Respectfully,

LORRIN ANDREWS,

Attorney for Plaintiffs in Error.

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii, et al., Plaintiffs in Error, vs. Henrietta Sullivan, et al., Defendants in Error. Praecipe to Clerk. Filed May 11, 1916, at 11:00 o'clock A. M. J. A. Thompson, Clerk. Lorrin Andrews, Honolulu, T. H., Attorney for Plaintiffs in Error. [146]

In the Superior Court of the Territory of Hawaii.

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees Under the
Will of JOHN J. SULLIVAN, HENRIETTA
SULLIVAN, JOHN BUCKLEY, PRIS-
CILLA ALBERTA SULLIVAN CLARKE
and ROBERT KIRKWOOD CLARKE, a

Minor, JUANITA ELLEN CLARKE, a
Minor, and THOMAS WALTERS CLARKE,
a Minor.

Defendants in Error.

**Order Extending Time for Preparation and
Transmission of Record.**

ACTION TO QUIET TITLE.

Upon the application of counsel for plaintiffs in error, and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit, it is hereby ordered that the plaintiffs in error and the Clerk of this Court be and they are hereby allowed until and including the 30th day of June, 1916, within which time to prepare and transmit to the Clerk of the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause on assignment of errors in this court, together with said assignment of errors and all other papers required as part of said record.

Dated at Honolulu, Territory of Hawaii, this 29th day of May, A. D. 1916.

[Seal]

E. M. WATSON,
Associate Justice, Supreme Court, Territory of
Hawaii.

Approved: HOLMES & OLSON,

FREAR, PROSSER, ANDERSON & MARX.

Attorneys for Defendants in Error. [147]

[Endorsed]: No. 913. In the Supreme Court of the Territory of Hawaii. Mary Kaleialii, et al., Plaintiffs in Error, vs. Henrietta Sullivan, et al., Defendants in Error. Order Extending Time for Preparation and Transmission of Record. Filed May 29, 1916, at 10:10 A. M. J. A. Thompson, Clerk.
[148]

*In the Supreme Court of the Territory of Hawaii,
October Term, 1915.*

MARY KALEIALII, REBECCA LEHIA MILES
and ANNIE K. BOYD, and ROBERT N.
BOYD, and VICTOR K. BOYD, by Their
Guardian *ad Litem*, JOSEPHINE BOYD,
Plaintiffs in Error,

vs.

HENRIETTA SULLIVAN, JOHN BUCKLEY
and HENRY HOLMES, Trustees under the
Will of JOHN J. SULLIVAN, HENRI-
ETTA SULLIVAN, JOHN BUCKLEY,
PRISCILLA ALBERTA SULLIVAN
CLARKE and ROBERT KIRKWOOD
CLARKE, a Minor, JUANITA ELLEN
CLARKE, a Minor, and THOMAS WAL-
TERS CLARKE, a Minor,
Defendants in Error.

**Certificate of Clerk to Transcript of Record and
Return to Writ of Error.**

Territory of Hawaii,
City and County of Honolulu,—ss.

I, James A. Thompson, Clerk of the Supreme
Court of the Territory of Hawaii, in obedience to the

writ of error, the original whereof is herewith returned, being pages 139 to 141, both inclusive, of the foregoing transcript, and in pursuance of the praeceipe to me directed, a copy whereof is hereto attached, being pages 145 to 146, both inclusive, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 138, both inclusive, AND I CERTIFY the same to be full, true and correct copies of the pleadings, entries, testimony and final judgment which are now on file and of record in the office of the Clerk of the Supreme Court of the Territory of Hawaii in the above-entitled case, Numbered 879 and 913; [149]

I DO FURTHER CERTIFY that the original citation on writ of error and acknowledgment of receipt of a true copy thereof by Messrs. Frear, Prosser, Anderson & Marx, being pages 142 to 144, both inclusive, and the original Order Extending Time for Preparation and Transmission of Record, being pages 147 to 148, both inclusive, of the foregoing transcript of record, are hereto attached and herewith returned;

I LASTLY CERTIFY that the cost of the foregoing transcript of record is \$55.70, and that the said amount has been paid by Lorrin Andrews, Esq.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 8th, day of June, A. D. 1916.

[Seal]

JAMES A. THOMPSON,
Clerk Supreme Court, Territory of Hawaii. [150]

[Endorsed]: No. 2818. United States Circuit Court of Appeals for the Ninth Circuit. Mary Kaleialii, Rebecca Lehia Miles and Annie K. Boyd, and Robert N. Boyd, and Victor K. Boyd, by Their Guardian *ad Litem*, Josephine Boyd, Plaintiffs in Error, vs. Henrietta Sullivan, John Buckley and Henry Holmes, Trustees Under the Will of John J. Sullivan, Henrietta Sullivan, John Buckley, Priscilla Alberta Sullivan Clarke, and Robert Kirkwood Clarke, a Minor, Juanita Ellen Clarke, a Minor, and Thomas Walters Clarke, a Minor, Defendants in Error. Transcript of Record. Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed June 20 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.